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DOCUMENTARY SOURCE BOOK OF AMERICAN HISTORY

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DOCUMENTARY SOURCE BOOK

OF

AMERICAN HISTORY

1606-1926

EDITED WITH NOTES

BY

WILLIAM MACDONALD

59- 637

THIRD EDITION, REVISED AND ENLARGED

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PREFACE TO THE THIRD EDITION

This book, first published in 1908, was reissued in 1916 with the addition of eleven documents covering the period from 1898 to 1913. The present and third edition adds seventeen documents, thereby enlarging the scope of the collection to include the year of publication. The great length and elaborateness of many recent acts of Congress have made increasingly difficult the task of selection, and compelled a rigorous pruning of the formal or technical provisions of many of the texts, but the same principles of selection and the same method of presentation that were followed in the earlier editions have been adhered to in this one. The fact that the book is designed for historical rather than legal study will explain the inclusion of original texts which in some cases have been substantially modified by later amendment.

I am under special obligation to Mr. J. M. Morse, of Yale University, for efficient aid in the preparation of the notes to the documents added in the present edition. To the many teachers and students in all parts of the United States, and in other countries as well, who have found the book a help in the study of American history I am glad of an opportunity to express my grateful appreciation.

WILLIAM MacDONALD.

New York,
October, 1926.

PREFACE TO THE FIRST EDITION

THE present volume has been prepared in response to a request, frequently made by teachers who have used my "Select Charters," "Select Documents," and "Select Statutes," for a briefer collection of documents particularly designed for courses of instruction of an elementary or comprehensive character, or which cover both the colonial and the constitutional periods of American history in a single year. In making the selection, accordingly, I have aimed to include such documents only as experience has shown to be most necessary or useful in comprehensive courses, bearing in mind the time available for the average student. The texts are the same as those in the three volumes named above, except the treaties, which here follow the better text in the *United States Statutes at Large*. Many of the documents, however, have been further condensed by the omission of formal, technical, or relatively unimportant provisions; a few errors in the earlier volumes have been corrected; and some changes have been made in the notes. I shall be glad if the volume serves to facilitate the study, especially in elementary courses, of the documentary sources of American history.

WILLIAM MACDONALD.

PROVIDENCE, RHODE ISLAND,
July, 1908.

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DOCUMENTARY SOURCE BOOK OF AMERICAN HISTORY

No. 1. First Charter of Virginia

April 10/20, 1606

The region included in the Virginia grant was claimed by Spain, but the close of the war between Spain and England, in 1604, left the latter free to extend the area of its occupation in America. Various plans for settlement and trade were brought forward soon after the return of Weymouth, in July, 1605. A petition for a charter, signed by Sir Thomas Gates, Sir George Somers, Hakluyt, and others, was favorably considered by James I., and in April, 1606, the charter passed the seals. The first draft of the charter, accompanying the petition, was probably drawn by Sir John Popham, lord chief justice, but the final form was the work of Sir Edward Coke, attorney-general, and Sir John Dodderidge, solicitor-general. Royal orders and instructions for the government of the two colonies and the conduct of their affairs were issued Nov. 20/30 and Dec. 10/20, 1606. An ordinance and constitution of March 9/19, 1607, increased the membership of the council and enlarged its authority.

References. — *Text* in Stith's *History of Virginia* (Sabin's ed., 1865), Appendix I. Invaluable documentary material for the early history of Virginia, to 1616, is set forth in Brown's *Genesis of the United States;* see also the same author's *First Republic in America*, 1–71. Important contemporary accounts are: John Smith's *A True Relation* (Deane's ed., 1866, with notes), and *General Historie* (Arber's reprint); Wingfield's *A Discourse of Virginia* (Deane's ed., with notes, in *Archæologia Americana*, IV., 67–163); and *A True Declaration of the Estate of the Colonie in Virginia* (in Force's *Tracts*, III.). See further: Neill's *Virginia Company;* Sainsbury's *Calendar of State Papers*, Colonial, I.

I. *JAMES*, by the Grace of God, King of *England*, *Scotland*, *France*, and *Ireland*, Defender of the Faith, &c. Whereas our loving and well-disposed Subjects, Sir *Thomas Gates*, and Sir *George Somers*, Knights, *Richard Hackluit*, Clerk, Prebendary of *Westminster*, and *Edward-Maria Wingfield*, *Thomas Hanham*, and *Ralegh Gilbert*, Esqrs. *William Parker*, and *George Popham*, Gentlemen, and divers others of our loving Subjects, have been humble Suitors unto us, that We would vouchsafe unto them our Licence, to make Habitation, Plantation, and to deduce a Colony of sundry of our People into that Part of *America*, commonly

called VIRGINIA, and other Parts and Territories in *America*, either appertaining unto us, or which are not now actually possessed by any *Christian* Prince or People, situate, lying, and being all along the Sea Coasts, between four and thirty Degrees of *Northerly* Latitude from the Equinoctial Line, and five and forty Degrees of the same Latitude, and in the main Land between the same four and thirty and five and forty Degrees, and the Islands thereunto adjacent, or within one hundred Miles of the Coast thereof;

II. AND to that End, and for the more speedy Accomplishment of their said intended Plantation and Habitation there, are desirous to divide themselves into two several Colonies and Companies; The one consisting of certain Knights, Gentlemen, Merchants, and other Adventurers, of our City of *London* and elsewhere, which are, and from time to time shall be, joined unto them, which do desire to begin their Plantation and Habitation in some fit and convenient Place, between four and thirty and one and forty Degrees of the said Latitude, alongst the Coasts of *Virginia* and Coasts of *America* aforesaid; And the other consisting of sundry Knights, Gentlemen, Merchants, and other Adventurers, of our Cities of *Bristol* and *Exeter*, and of our Town of *Plimouth*, and of other Places, which do join themselves unto that Colony, which do desire to begin their Plantation and Habitation in some fit and convenient Place, between eight and thirty Degrees and five and forty Degrees of the said Latitude, all alongst the said Coast of *Virginia* and *America*, as that Coast lyeth:

III. WE, greatly commending, and graciously accepting of, their Desires for the Furtherance of so noble a Work, which may, by the Providence of Almighty God, hereafter tend to the Glory of his Divine Majesty, in propagating of *Christian* Religion to such People, as yet live in Darkness and miserable Ignorance of the true Knowledge and Worship of God, and may in time bring the Infidels and Savages, living in those Parts, to human Civility, and to a settled and quiet Government; DO, by these our Letters Patents, graciously accept of, and agree to, their humble and well-intended Desires;

IV. AND do therefore, for Us, our Heirs, and Successors, GRANT and agree, that the said Sir *Thomas Gates*, Sir *George Somers*, *Richard Hackluit*, and *Edward-Maria Wingfield*, Adventurers of and for our City of *London*, and all such others, as

are, or shall be, joined unto them of that Colony, shall be called the *first Colony;* And they shall and may begin their said first Plantation and Habitation, at any Place upon the said Coast of *Virginia* or *America*, where they shall think fit and convenient between the said four and thirty and one and forty Degrees of the said Latitude; And that they shall have all the Lands, Woods, Soil, Grounds, Havens, Ports, Rivers, Mines, Minerals, Marshes, Waters, Fishings, Commodities, and Hereditaments, whatsoever, from the said first Seat of their Plantation and Habitation by the Space of fifty Miles of *English* Statute Measure, all along the said Coast of *Virginia* and *America*, towards the *West* and *Southwest* as the Coast lyeth, with all the Islands within one hundred Miles directly over against the same Sea Coast; And also all the Lands . . . [etc.] . . . from the said Place of their first Plantation and Habitation for the space of fifty like *English* Miles, all alongst the said Coast of *Virginia* and *America*, towards the *East* and *Northeast*, or towards the *North*, as the Coast lyeth, together with all the Islands within one hundred Miles, directly over against the said Sea Coast; And also all the Lands . . . [etc.] . . . from the same fifty Miles every way on the Sea Coast, directly into the main Land by the Space of one hundred like *English* Miles; And shall and may inhabit and remain there; and shall and may also build and fortify within any the same, for their better Safeguard and Defence, according to their best Discretion, and the Discretion of the Council of that Colony; And that no other of our Subjects shall be permitted, or suffered, to plant or inhabit behind, or on the Backside of them, towards the main Land, without the Express Licence or Consent of the Council of that Colony, thereunto in Writing first had and obtained.

V. And we do likewise . . . Grant and agree, that the said *Thomas Hanham*, and *Ralegh Gilbert*, *William Parker*, and *George Popham*, and all others of the Town of *Plimouth* in the County of *Devon*, or elsewhere, which are, or shall be, joined unto them of that Colony, shall be called the *second Colony;* And that they shall and may begin their said Plantation and Seat of their first Abode and Habitation, at any Place upon the said Coast of *Virginia* and *America*, where they shall think fit and convenient, between eight and thirty Degrees of the said Latitude, and five and forty Degrees of the same Latitude; And that they shall

have all the Lands . . . [etc.] . . . from the first Seat of their Plantation and Habitation by the Space of fifty like *English* Miles, as is aforesaid, all alongst the said Coast of *Virginia* and *America*, towards the *West* and *Southwest*, or towards the *South*, as the Coast lyeth, and all the Islands within one hundred Miles, directly over against the said Sea Coast; And also all the Lands . . . [etc.] . . . from the said Place of their first Plantation and Habitation for the Space of fifty like Miles, all alongst the said Coast of *Virginia* and *America*, towards the *East* and *Northeast*, or towards the *North*, as the Coast lyeth, and all the Islands also within one hundred Miles directly over against the same Sea Coast; And also all the Lands . . . [etc.] . . . from the same fifty Miles every way on the Sea Coast, directly into the main Land, by the Space of one hundred like *English* Miles. . . .

VI. Provided always, and our Will and Pleasure herein is, that the Plantation and Habitation of such of the said Colonies, as shall last plant themselves, as aforesaid, shall not be made within one hundred like *English* Miles of the other of them, that first began to make their Plantation, as aforesaid.

VII. And we do also ordain . . . that each of the said Colonies shall have a Council, which shall govern and order all Matters and Causes, which shall arise, grow, or happen, to or within the same several Colonies, according to such Laws, Ordinances, and Instructions, as shall be, in that behalf, given and signed with Our Hand or Sign Manual, and pass under the Privy Seal of our Realm of *England;* Each of which Councils shall consist of thirteen Persons, to be ordained, made, and removed, from time to time, according as shall be directed and comprised in the same instructions; And shall have a several Seal, for all Matters that shall pass or concern the same several Councils. . . .

VIII. And that also there shall be a Council established here in *England*, which shall, in like Manner, consist of thirteen Persons, to be, for that Purpose, appointed by Us . . ., which shall be called our *Council of Virginia;* And shall, from time to time, have the superior Managing and Direction, only of and for all Matters, that shall or may concern the Government, as well of the said several Colonies, as of and for any other Part or Place, within the aforesaid Precincts of four and thirty and five and forty Degrees, above mentioned. . . .

IX. And moreover, we do Grant . . . that the said several Councils, of and for the said several Colonies, shall and lawfully may, by Virtue hereof, from time to time, without any Interruption of Us . . ., give and take Order, to dig, mine, and search for all Manner of Mines of Gold, Silver, and Copper, as well within any part of their said several Colonies, as for the said main Lands on the Backside of the same Colonies; And to Have and enjoy the Gold, Silver, and Copper, to be gotten thereof, to the Use and Behoof of the same Colonies, and the Plantations thereof; Yielding therefore, to Us . . . the fifth Part only of all the same Gold and Silver, and the fifteenth Part of all the same Copper, so to be gotten or had, as is aforesaid, without any other Manner of Profit or Account, to be given or yielded to Us . . . for or in Respect of the same:

X. And that they shall, or lawfully may, establish and cause to be made a Coin, to pass current there between the People of those several Colonies, for the more Ease of Traffick and Bargaining between and amongst them and the Natives there, of such Metal, and in such Manner and Form, as the said several Councils there shall limit and appoint.

XI. And we do likewise . . . give full Power and Authority to the said Sir *Thomas Gates* . . . [and others] . . ., and to every of them, and to the said several Companies, Plantations, and Colonies, that they . . . shall and may, at all and every time and times hereafter, have, take, and lead in the said Voyage, and for and towards the said several Plantations and Colonies, and to travel thitherward, and to abide and inhabit there, in every the said Colonies and Plantations, such and so many of our Subjects, as shall willingly accompany them, or any of them, in the said Voyages and Plantations; With sufficient Shipping, and Furniture of Armour, Weapons, Ordinance, Powder, Victual, and all other things, necessary for the said Plantations, and for their Use and Defence there: Provided always, that none of the said Persons be such, as shall hereafter be specially restrained by Us. . . .

XII. Moreover, we do . . . Give and grant Licence unto the said Sir *Thomas Gates* . . . [and others] . . ., and to every of the said Colonies, that they . . . shall and may . . . for their several Defences, encounter, expulse, repel, and resist, as well by Sea as by Land, by all Ways and Means whatsoever, all and

every such Person and Persons, as without the especial Licence of the said several Colonies and Plantations, shall attempt to inhabit within the said several Precincts and Limits of the said several Colonies and Plantations, or any of them, or that shall enterprise or attempt, at any time hereafter, the Hurt, Detriment, or Annoyance, of the said several Colonies or Plantations:

XIII. Giving and granting, by these Presents, unto the said Sir *Thomas Gates* . . . [and others] . . . and their Associates of the said first Colony, and unto the said *Thomas Hanham* . . . [and others] . . . and their Associates of the said second Colony . . . Power and Authority to take and surprise, by all Ways and Means whatsoever, all and every Person and Persons, with their Ships, Vessels, Goods and other Furniture, which shall be found trafficking, into any Harbour or Harbours, Creek or Creeks, or Place, within the Limits or Precincts of the said several Colonies and Plantations, not being of the same Colony, until such time, as they, being of any Realms or Dominions under our Obedience, shall pay, or agree to pay, to the Hands of the Treasurer of that Colony, within whose Limits and Precincts they shall so traffick, two and a half upon every Hundred, of any thing, so by them trafficked, bought, or sold; And being Strangers, and not Subjects under our Obeysance, until they shall pay five upon every Hundred, of such Wares and Merchandises, as they shall traffick, buy, or sell, within the Precincts of the said several Colonies, wherein they shall so traffick, buy, or sell, as aforesaid; Which Sums of Money, or Benefit, as aforesaid, for and during the Space of one and twenty Years, next ensuing the Date hereof, shall be wholly emploied to the Use, Benefit, and Behoof of the said several Plantations, where such Traffick shall be made; And after the said one and twenty Years ended, the same shall be taken to the Use of Us . . . by such Officers and Ministers, as by Us . . . shall be thereunto assigned or appointed.

XIV. And we do further . . . Give and grant unto the said Sir *Thomas Gates* . . . [and others] . . ., and to their Associates of the said first Colony and Plantation, and to the said *Thomas Hanham* . . . [and others] . . ., and their Associates of the said second Colony and Plantation, that they . . . by their Deputies, Ministers, and Factors, may transport the Goods, Chattels, Armour, Munition, and Furniture, needful to be used

by them, for their said Apparel, Food, Defence, or otherwise in Respect of the said Plantations, out of our Realms of *England* and *Ireland*, and all other our Dominions, from time to time, for and during the Time of seven Years, next ensuing the Date hereof, for the better Relief of the said several Colonies and Plantations, without any Custom, Subsidy, or other Duty, unto Us . . . to be yielded or paid for the same.

XV. Also we do . . . Declare . . . that all and every the Persons, being our Subjects, which shall dwell and inhabit within every or any of the said several Colonies and Plantations, and every of their children, which shall happen to be born within any of the Limits and Precincts of the said several Colonies and Plantations, shall have and enjoy all Liberties, Franchises, and Immunities, within any of our other Dominions, to all Intents and Purposes, as if they had been abiding and born within this our Realm of *England*, or any other of our said Dominions.

XVI. Moreover, our gracious Will and Pleasure is, and we do . . . declare and set forth, that if any Person or Persons, which shall be of any of the said Colonies and Plantations, or any other, which shall traffick to the said Colonies and Plantations, or any of them, shall, at any time or times hereafter, transport any Wares, Merchandises, or Commodities, out of any our Dominions, with a Pretence to land, sell, or otherwise dispose of the same, within any the Limits and Precincts of any the said Colonies and Plantations, and yet nevertheless, being at Sea, or after he hath landed the same within any of the said Colonies and Plantations, shall carry the same into any other Foreign Country, with a Purpose there to sell or dispose of the same, without the Licence of Us . . . in that Behalf first had and abtained; That then, all the Goods and Chattels of such Person or Persons, so offending and transporting, together with the said Ship or Vessel, wherein such Transportation was made, shall be forfeited to Us . . .

XVII. Provided always, and our Will and Pleasure is, and we do hereby declare to all *Christian* Kings, Princes, and States, that if any Person or Persons, which shall hereafter be of any of the said several Colonies and Plantations, or any other, by his, their or any of their Licence and Appointment, shall, at any time or times hereafter, rob or spoil, by Sea or by Land, or do any Act of unjust and unlawful Hostility, to any the Subjects of Us. . .

or any the Subjects of any King, Prince, Ruler, Governor, or State, being then in League or Amity with Us . . ., and that upon such Injury, or upon just Complaint of such Prince, Ruler, Governor, or State, or their Subjects, We . . . shall make open Proclamation, within any of the Ports of our Realm of *England*, commodious for that Purpose, That the said Person or Persons, having committed any such Robbery or Spoil, shall, within the Term to be limited by such Proclamations, make full Restitution or Satisfaction of all such Injuries done, so as the said Princes, or others, so complaining, may hold themselves fully satisfied and contented; And that, if the said Person or Persons, having committed such Robbery or Spoil, shall not make, or cause to be made, Satisfaction accordingly, within such Time so to be limited, That then it shall be lawful to Us . . . to put the said Person or Persons, having committed such Robbery or Spoil, and their Procurers, Abetters, or Comforters, out of our Allegiance and Protection; And that it shall be lawful and free, for all Princes and others, to pursue with Hostility the said Offenders, and every of them, and their and every of their Procurers, Aiders, Abetters, and Comforters, in that Behalf.

XVIII. And finally, we do . . . Grant and agree, to and with the said Sir *Thomas Gates* . . . [and others] . . ., and all others of the said first Colony, that We . . ., upon Petition in that Behalf to be made, shall, by Letters-patent under the Great Seal of *England*, Give and Grant unto such Persons, their Heirs, and Assigns, as the Council of that Colony, or the most Part of them, shall, for that Purpose nominate and assign, all the Lands, Tenements, and Hereditaments, which shall be within the Precincts limited for that Colony, as is aforesaid, To be holden of Us, our Heirs, and Successors, as of our Manor at *East-Greenwich* in the County of *Kent*, in free and common Soccage only, and not in Capite:

XIX. [Tenure of land under the second colony as in Section XVIII.]

XX. All which Lands, Tenements, and Hereditaments, so to be passed by the said several Letters-patent, shall be sufficient Assurance from the said Patentees, so distributed and divided amongst the Undertakers for the Plantation of the said several Colonies, and such as shall make their Plantations in either of the said several Colonies, in such Manner and Form, and for such

Estates, as shall be ordered and set down by the Council of the said Colony, or the most Part of them, respectively, within which the same Lands, Tenements, and Hereditaments shall lye or be; Although express Mention of the true yearly Value or Certainty of the Premises, or any of them, or of any other Gifts or Grants, by Us or any of our Progenitors or Predecessors, to the aforesaid Sir *Thomas Gates* . . . [and others] . . ., or any of them, heretofore made, in these Presents, is not made; Or any Statute, Act, Ordinance, or Provision, Proclamation, or Restraint, to the contrary hereof had, made, ordained, or any other Thing, Cause, or Matter whatsoever, in any wise notwithstanding. . . .

No. 2. Second Charter of Virginia

May 23/June 2, 1609

In January, 1609, Newport returned from Virginia, bringing various papers setting forth the condition of the colony. The first charter, in itself essentially experimental, had already proved defective; and this, together with the discouraging outlook for the Compar . led to an application for a new charter, with larger and more specific privileges. The first drafts of both the second and the third charters, annexed to the petitions, were probably drawn by Sir Edwin Sandys, but the final form in each case was the work of Sir Henry Hobart, attorney-general, and Sir Francis Bacon, solicitor-general. With the second charter the connection between the Plymouth Company and the London Company ceased, and the latter became a separate corporate body.

References. — *Text* in Stith's *History of Virginia* (Sabin's ed., 1865), Appendix II. The *Records of the Virginia Company of London*, 1619–1624, have been edited by Susan M. Kingsbury; see also Brown's *First Republic in America*, 73–165.

[The charter begins with a recital of the grant of 1606, and continues:]

II. Now, forasmuch as divers and sundry of our loving Subjects, as well Adventurers, as Planters, of the said first Colony . . . have of late been humble Suitors unto Us, that (in Respect of their great Charges and the Adventure of many of their Lives, which they have hazarded in the said Discovery and Plantation of the said Country) We would be pleased to grant them a further Enlargement and Explanation of the said Grant, Privileges. and

Liberties, and that such Counsellors, and other Officers, may be appointed amongst them, to manage and direct their affairs, as are willing and ready to adventure with them, as also whose Dwellings are not so far remote from the City of *London*, but that they may, at convenient Times, be ready at Hand, to give their Advice and Assistance, upon all Occasions requisite.

III. We . . . Do . . . Give, Grant, and Confirm, to our trusty and well-beloved Subjects, *Robert*, Earl of *Salisbury* . . . [and others[1]] . . . ; And to such, and so many, as they do, or shall hereafter, admit to be joined with them, in Form hereafter in these Presents expressed, whether they go in their Persons, to be Planters there in the said Plantation, or whether they go not, but adventure their Monies, Goods, or Chattels; That they shall be one Body or Commonalty perpetual, and shall have perpetual Succession, and one common Seal, to serve for the said Body or Commonalty; And that they, and their Successors, shall be known, called, and incorporated by the Name of, *The Treasurer and Company of Adventurers and Planters of the City of London for the first Colony in Virginia:*

* * * * * * * *

VI. And we do also . . . give, grant and confirm, unto the said Treasurer and Company, and their Successors, under the Reservations, Limitations, and Declarations, hereafter expressed, all those Lands, Countries, and Territories, situate, lying, and being, in that Part of *America* called Virginia, from the Point of Land, called Cape or *Point Comfort*, all along the Sea Coast, to the *Northward* two hundred Miles, and from the said Point of *Cape Comfort*, all along the Sea Coast, to the *Southward* two hundred Miles, and all that Space and Circuit of Land, lying from the Sea Coast of the Precinct aforesaid, up into the Land, throughout from Sea to Sea, West, and Northwest; And also all the Islands, lying within one hundred Miles, along the Coast of both Seas of the Precinct aforesaid. . . .

VII. And nevertheless, our Will and Pleasure is, and we do, by these Presents, charge, command, warrant, and authorise,

[1] "The incorporators of this charter were 56 city companies of London and 950 persons; of whom 21 were peers, 96 knights, 11 doctors, ministers, etc., 53 captains, 28 esquires, 58 gentlemen, 110 merchants, and 282 citizens and others not classified." Brown's *Genesis of the United States*, I., 228, note 1. The list of incorporators is given in full by Brown. — Ed.

that the said Treasurer and Company, or their Successors, or the major Part of them, which shall be present and assembled for that Purpose, shall, from time to time, under their Common Seal, DISTRIBUTE, convey, assign, and set over, such particular Portions of Lands, Tenements, and Hereditaments, by these Presents, formerly granted, unto such our loving Subjects, naturally born, or Denizens, or others, as well Adventurers as Planters, as by the said Company (upon a Commission of Survey and Distribution, executed and returned for that Purpose), shall be nominated, appointed, and allowed; Wherein our Will and Pleasure is, that Respect be had, as well of the Proportion of the Adventurer, as to the special Service, Hazard, Exploit, or Merit of any Person, so to be recompenced, advanced, or rewarded.

VIII. AND forasmuch, as the good and prosperous Success of the said Plantation cannot but chiefly depend, next under the Blessing of God, and the Support of our Royal Authority, upon the provident and good Direction of the whole Enterprize, by a careful and understanding Council, and that it is not convenient, that all the Adventurers shall be so often drawn to meet and assemble, as shall be requisite for them to have Meetings and Conference about the Affairs thereof; Therefore we DO ORDAIN, establish, and confirm, that there shall be perpetually one COUNCIL here resident, according to the Tenour of our former Letters-patents . . .

* * * * * * * *

XIII. AND further . . . we do . . . GIVE and GRANT full Power and Authority to our said Council, here resident, as well at this present Time, as hereafter from time to time, to nominate, make, constitute, ordain, and confirm, by such Name or Names, Stile or Stiles, as to them shall seem good, And likewise to revoke, discharge, change, and alter, as well all and singular Governors, Officers, and Ministers, which already have been made, as also which hereafter shall be by them thought fit and needful to be made or used, for the Government of the said Colony and Plantation:

XIV. AND also to make, ordain, and establish all Manner of Orders, Laws, Directions, Instructions, Forms, and Ceremonies of Government and Magistracy, fit and necessary, for and concerning the Government of the said Colony and Plantation; And

the same, at all times hereafter, to abrogate, revoke, or change not only within the Precincts of the said Colony, but also upon the Seas in going and coming, to and from the said Colony, as they, in their good Discretion, shall think to be fittest for the Good of the Adventurers and Inhabitants there.

* * * * * * * *

XVI. And we do further . . . Ordain and establish, that the said Treasurer and Council here resident, and their Successors, or any four of them, being assembled (the Treasurer being one) shall, from time to time, have full Power and Authority, to admit and receive any other Person into their Company, Corporation, and Freedom; And further, in a General Assembly of the Adventurers, with the Consent of the greater Part, upon good Cause, to disfranchise and put out any Person or Persons, out of the said Freedom or Company.

* * * * * * * *

XIX. And for their further Encouragement . . . we do . . . Yield and Grant, to and with the said Treasurer and Company, and their Successors, and every of them, their Factors, and Assigns, that they, and every of them, shall be free of all Subsidies and Customs in *Virginia*, for the Space of one and twenty Years, and from all Taxes and Impositions, for ever, upon any Goods or Merchandises, at any time or times hereafter, either upon Importation thither, or Exportation from thence, into our Realm of *England*, or into any other of our Realms or Dominions, by the said Treasurer and Company, and their Successors, their Deputies, Factors, or Assigns, or any of them: Except only the five Pounds *per Cent.* due for Custom, upon all such Goods and Merchandises, as shall be brought or imported into our Realm of *England*, or any other of these our Dominions, according to the ancient Trade of Merchants; Which five Pounds *per Cent.* only being paid, it shall be thenceforth lawful and free for the said Adventurers, the same Goods and Merchandises to export, and carry out of our said Dominions, into foreign Parts, without any Custom, Tax, or other Duty, to be paid to us . . . or to any other our Officers or Deputies: Provided, that the said Goods and Merchandises be shipped out, within thirteen Months, after their first Landing within any Part of these Dominions.

* * * * * * * *

XXIII. AND forasmuch, as it shall be necessary for all such our loving Subjects, as shall inhabit within the said Precincts of *Virginia*, aforesaid, to determine to live together, in the Fear and true Worship of Almighty God, Christian Peace, and civil Quietness, each with other, whereby every one may, with more Safety, Pleasure, and Profit, enjoy that, whereunto they shall attain with great Pain and Peril; WE . . . do GIVE and GRANT unto the said Treasurer and Company, and their Successors, and to such Governors, Officers, and Ministers, as shall be, by our said Council, constituted and appointed, according to the Natures and Limits of their Offices and Places respectively, that they shall and may, from time to time for ever hereafter, within the said Precincts of *Virginia*, or in the way by Sea thither and from thence, have full and absolute Power and Authority, to correct, punish, pardon, govern, and rule, all such the Subjects of Us . . . as shall, from time to time, adventure themselves in any Voyage thither, or that shall, at any time hereafter, inhabit in the Precincts and Territories of the said Colony, as aforesaid, according to such Orders, Ordinances, Constitutions, Directions, and Instructions, as by our said Council, as aforesaid, shall be established; And in Defect thereof, in case of Necessity, according to the good Discretions of the said Governor and Officers, respectively, as well in Cases capital and criminal as civil, both marine and other; So always, as the said Statutes, Ordinances, and Proceedings, as near as conveniently may be, be agreeable to the Laws, Statutes, Government, and Policy of this our Realm of *England*.

XXIV. AND we do further . . . GRANT, DECLARE, and ORDAIN, that such principal Governor, as, from time to time, shall duly and lawfully be authorised and appointed, in Manner and Form in these Presents heretofore expressed, shall have full Power and Authority, to use and exercise Martial Law, in Cases of Rebellion or Mutiny, in as large and ample Manner, as our Lieutenants in our Counties, within this our Realm of *England*, have, or ought to have, by Force of their Commissions of Lieutenancy.

* * * * * * * *

XXIX. AND lastly, because the principal Effect, which we can desire or expect of this Action, is the Conversion and Reduction of the People in those Parts unto the true Worship of God and

Christian Religion, in which Respect we should be loath, that any Person should be permitted to pass, that we suspected to affect the superstitions of the Church of *Rome;* We do hereby DECLARE, that it is our Will and Pleasure, that none be permitted to pass in any Voyage, from time to time to be made into the said Country, but such, as first shall have taken the Oath of Supremacy; For which Purpose, we do, by these Presents, give full Power and Authority, to the Treasurer for the time being, and any three of the Council, to tender and exhibit the said Oath, to all such Persons, as shall at any time, be sent and employed in the said Voyage. . . .

No. 3. Third Charter of Virginia

March 12/22, 1611/12

THE immediate reason for the third charter of Virginia was the desire to include within the limits of the Company the Bermudas, or Somers Islands, respecting whose beauty, fertility, and wealth glowing reports had been received; but the failure of many subscribers to pay their subscriptions, and the consequent low state of the treasury, emphasized the need of stronger powers of control. The petition was probably granted before November, 1610; but the names of subscribers were obtained with difficulty, and it was March, 1612, before the charter passed the seals. The rights in the Bermudas were subsequently sold by the Company to some of its own members, who, in 1614, obtained a charter as the Somers Islands Company. The Virginia charter of 1612 was annulled by writ of *quo warranto* in 1624.

REFERENCES. — *Text* in Stith's *History of Virginia* (Sabin's ed., 1865), Appendix III. Hening's *Statutes at Large*, I., gives the early laws of the colony. The royal proclamation of 1625 is in Hazard's *Historical Collections*, I., 203–205. See also Brown's *First Republic in America*, 165–648.

[The charter begins with a recital of the grant of 1609, and continues:]

III. Now, forasmuch as we are given to understand, that in those Seas, adjoining to the said Coasts of *Virginia*, and without the Compass of those two hundred Miles . . ., and yet not far distant from the said Colony in *Virginia*, there are, or may be, divers Islands, lying desolate and uninhabited, some of which are already made known and discovered, by the Industry, Travel, and Expences of the said Company, and others also are supposed to be

and remain, as yet, unknown and undiscovered, all and every of which it may import the said Colony, both in Safety and Policy of Trade, to populate and plant, in Regard whereof, as well for the preventing of Peril, as for the better Commodity and Prosperity of the said Colony, they have been humble Suitors unto us, that we would be pleased to grant unto them an Enlargement of our said former Letters Patents . . . :

IV. We therefore . . . do . . . Give, Grant, and Confirm to the said Treasurer and Company of Adventurers and Planters of the city of *London* for the first Colony in *Virginia*, and to their Heirs and Successors, for ever, all and singular those Islands whatsoever, situate and being in any Part of the Ocean Seas bordering upon the Coast of our said first Colony in *Virginia*, and being within three hundred Leagues of any of the Parts heretofore granted to the said Treasurer and Company, in our said former Letters Patents, as aforesaid, and being within or between the one and fortieth and thirtieth Degrees of *Northerly* Latitude; . . . Provided always, that the said Islands, or any the Premises herein mentioned, or by these Presents intended or meant to be granted, be not actually possessed or inhabited by any other *Christian* Prince or Estate, nor be within the Bounds, Limits, or Territories of the *Northern* Colony, heretofore by Us granted to be planted by divers of our loving Subjects, in the *North* Parts of *Virginia* . . .

* * * * * * * *

VII. And We do hereby ordain and grant . . . that the said Treasurer and Company of Adventurers and Planters aforesaid, shall and may, once every Week, or oftener, at their Pleasure, hold and keep a Court and Assembly, for the better Order and Government of the said Plantation, and such things, as shall concern the same. . . .

VIII. And that nevertheless, for the handling, ordering, and disposing of Matters and Affairs of greater Weight and Importance, and such, as shall or may, in any Sort, concern the Weal Publick and general Good of the said Company and Plantation, as namely, the Manner of Government from time to time to be used, the Ordering and Disposing of the Lands and Possessions, and the Settling and Establishing of a Trade there, or such like, there shall be held and kept, every Year, upon the last *Wednes-*

day, save one, of *Hillary* Term, *Easter*, *Trinity*, and *Michaelmas* Terms, for ever, one great, general, and solemn Assembly, which four Assemblies shall be stiled and called, *The four Great and General Courts of the Council and Company of Adventurers for Virginia;* In all and every of which said Great and General Courts, so assembled . . ., the said Treasurer and Company, or the greater Number of them, so assembled, shall and may have full Power and Authority . . . to elect and chuse discreet Persons, to be of our said Council for the said first Colony in *Virginia*, and to nominate and appoint such Officers, as they shall think fit and requisite, for the Government, Managing, Ordering, and Dispatching of the Affairs of the said Company; And shall likewise have full Power and Authority, to ordain and make such Laws and Ordinances, for the Good and Welfare of the said Plantation, as to them, from time to time, shall be thought requisite and meet: *So always*, as the same be not contrary to the Laws and Statutes of this our Realm of *England*. . . .

* * * * * * * *

XIV. And furthermore, whereas we have been certified, that divers lewd and ill-disposed Persons, both Sailers, Soldiers, Artificers, Husbandmen, Labourers, and others, having received Wages, Apparel, and other Entertainment from the said Company, or having contracted and agreed with the said Company, to go, or to serve, or to be employed in the said Plantation of the said first Colony in *Virginia*, have afterwards, either withdrawn, hid, or concealed themselves, or have refused to go thither, after they have been so entertained and agreed withal; And that divers and sundry Persons also, which have been sent and employed in the said Plantation of the said first Colony in *Virginia*, at and upon the Charge of the said Company, and having there misbehaved themselves by Mutinies, Sedition, or other notorious Misdemeanors, or having been employed or sent abroad, by the Governor of Virginia or his Deputy, with some Ship or Pinnace, for our Provision of the said Colony, or for some Discovery, or other Business and Affairs, concerning the same, have from thence most treacherously, either come back again and returned into our Realm of *England*, by Stealth, or without Licence of our Governor of our said Colony in Virginia for the time being, or have been sent hither, as Misdoers and Offenders; And that many also of

those Persons, after their Return from thence, having been questioned by our said Council here, for such their Misbehaviors and Offences, by their insolent and contemptuous Carriage in the Presence of our said Council, have shewed little Respect and Reverence, either to the Place, or Authority, in which we have placed and appointed them; And others, for the colouring of their Lewdness and Misdemeanors committed in *Virginia*, have endeavoured, by most vile and slanderous Reports, made and divulged, as well of the Country of *Virginia*, as also of the Government and Estate of the said Plantation and Colony, as much as in them lay, to bring the said Voyage and Plantation into Disgrace and Contempt; By Means whereof, not only the Adventurers and Planters, already engaged in the said Plantation, have been exceedingly abused and hindered, and a great Number of other our loving and well-disposed Subjects, otherwise well-affected, and inclined to join and adventure in so noble, christian, and worthy an Action, have been discouraged from the same, but also the utter Overthrow and Ruin of the said Enterprise hath been greatly endangered, which cannot miscarry without some Dishonour to Us and our Kingdom;

XV. Now, forasmuch as it appeareth unto us, that these Insolences, Misdemeanors, and Abuses, not to be tolerated in any civil Government, have, for the most part, grown and proceeded, in regard our said Council have not any direct Power and Authority, by any express Words in our former Letters Patents, to correct and chastise such Offenders; We therefore, for more speedy Reformation of so great and enormous Abuses and Misdemeanors, heretofore practised and committed, and for the preventing of the like hereafter, do . . . GIVE AND GRANT to the said Treasurer and Company, and their Successors for ever, that it shall and may be lawful for our said Council for the said first Colony in *Virginia*, or any two of them (whereof the said Treasurer, or his Deputy . . . , to be always one) by Warrant under their Hands, to send for, or to cause to be apprehended, all and every such Person and Persons, who shall be noted, or accused, or found, at any time or times hereafter, to offend, or misbehave themselves, in any the Offences before mentioned and expressed; And upon the Examination of any such Offender or Offenders, and just Proof made by Oath, taken before the said

Council, of any such notorious Misdemeanors by them committed, as aforesaid; And also upon any insolent, and contemptuous, or indecent Carriage and Misbehaviour, to or against our said Council, shewed or used by any such Person or Persons, so called, convented, and appearing before them, as aforesaid; That in all such Cases, they, our said Council, or any two of them, for the time being, shall and may have full Power and Authority, either here to bind them over with good Sureties for their good Behaviour, and further therein to proceed, to all Intents and Purposes, as it is used, in other like Cases, within our Realm of *England;* Or else, at their Discretions, to remand and send back, the said Offenders, or any of them, unto the said Colony in *Virginia*, there to be proceeded against and punished, as the Governor, Deputy, or Council there . . . shall think meet; or otherwise, according to such Laws and Ordinances, as are and shall be in Use there, for the Well-ordering and good Government of the said Colony.

XVI. And for the more effectual Advancing of the said Plantation, we do further . . . Give and Grant, unto the said Treasurer and Company, full Power and Authority, free Leave, Liberty, and Licence, to set forth, erect, and publish, one or more Lottery or Lotteries, to have Continuance . . . for the Space of our [one] whole Year, next after the Opening of the same; And after the End and Expiration of the said Term, the said Lottery or Lotteries to continue and be further kept, during our Will and Pleasure only, and not otherwise. . . .

XVII. And our further Will and Pleasure is, that the said Lottery and Lotteries shall and may be opened and held, within our City of *London*, or in any other City or Town, or elsewhere, within this our Realm of *England*, with such Prizes, Articles, Conditions, and Limitations, as to them, the said Treasurer and Company, in their Discretions, shall seem convenient:

* * * * * * * *

XX. And further, our Will and Pleasure is, that in all Questions and Doubts, that shall arise, upon any Difficulty of Construction or Interpretation of any Thing, contained in these, or any other our former Letters-patents, the same shall be taken and interpreted, in most ample and beneficial Manner for the said

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Treasurer and Company, and their Successors, and every Member thereof.

XXI. And lastly, we do, by these Presents, ratify and confirm unto the said Treasurer and Company, and their Successors, for ever, all and all Manner of Privileges, Franchises, Liberties, Immunities, Preheminences, Profits, and Commodities, whatsoever, granted unto them in any our former Letters-patents, and not in these Presents revoked, altered, changed, or abridged.

No. 4. Mayflower Compact

November 11/21, 1620

The Mayflower Compact, drawn up on shipboard, was intended not only as a basis for the government of the colony in the absence of a patent, but also, according to Bradford, as an offset to the "discontented and mutinous speeches" of some of the company, to the effect that when they landed "they would use their own liberty; for none had power to command them, the patent they had being for Virginia, and not for New England, which belonged to another government, with which the Virginia Company had nothing to do."

References. — *Text* in Bradford's *History of Plymouth Plantation*, Mass. Hist. Coll., Fourth Series, III., 89, 90. Bradford does not give a list of signers. On the early history of the Plymouth Colony, see Mourt's *Relation* (Dexter's ed., 1865); Morton's *New England Memorial;* Young's *Chronicles of the Pilgrim Fathers*, 1602–1625; Arber's *Story of the Pilgrim Fathers*. The laws of the colony, 1623–1682, are in the *Plymouth Colony Records*, XI.

In the name of God, Amen. We whose names are underwritten, the loyall subjects of our dread soveraigne Lord, King James, . . . haveing undertaken, for the glorie of God, and advancemente of the Christian faith, and honour of our king & countrie, a voyage to plant the first colonie in the Northerne parts of Virginia, doe by these presents solemnly & mutualy in the presence of God, and one of another, covenant & combine our selves togeather into a civill body politick, for our better ordering & preservation & furtherance of the ends aforesaid; and by vertue hearof to enacte, constitute, and frame such just & equall lawes, ordinances, acts, constitutions, & offices, from time to time, as shall be thought most meete & convenient for the generall good of the Colonie, unto which we promise all due submission and obedience. . . .

59- 637

No. 5. Ordinance for Virginia

July 24/August 3, 1621

THE first assembly in Virginia, and the first representative assembly in America, was convened July 30/Aug. 9, 1619, by Governor Yeardley, under authority of a commission executed by the Virginia Company in November, 1618; and the ordinance of 1621, probably of similar tenor, granted to the colony for the future the same form of government. The model here outlined was closely followed by the later English colonies.

REFERENCES. — *Text* in Stith's *History of Virginia* (Sabin's ed., 1865), Appendix IV. The records of the assembly of 1619 are in Hening's *Statutes at Large*, I. The "Orders and Constitutions" of 1619–1620 are in Force's *Tracts*, III. See also W. W. Henry's *First Legislative Assembly in America*, in Report of Amer. Hist. Assoc., 1893, pp. 301–316; Brown's *First Republic in America*, 308–324.

An Ordinance and Constitution of the Treasurer, Council, and Company in England, *for a Council of State and General Assembly.*

I. To all People, to whom these Presents shall come, be seen, or heard, The Treasurer, Council, and Company of Adventurers and Planters for the city of *London* for the first Colony of *Virginia*, send Greeting. KNOW YE, that we . . . have thought fit to make our Entrance, by ordering and establishing such Supreme Councils, as may not only be assisting to the Governor for the time being, in the Administration of Justice, and the Executing of other Duties to this Office belonging, but also, by their vigilant Care and Prudence, may provide, as well for a Remedy of all Inconveniences, growing from time to time, as also for the advancing of Increase, Strength, Stability, and Prosperity of the said Colony:

II. WE therefore . . . by Authority directed to us from his Majesty under the Great Seal, upon Mature Deliberation, do hereby order and declare, that, from hence forward, there shall be TWO SUPREME COUNCILS in *Virginia*, for the better Government of the said Colony aforesaid.

III. THE one of which Councils, to be called THE COUNCIL OF STATE (and whose Office shall chiefly be assisting, with their

Care, Advice, and Circumspection, to the said Governor) shall be chosen, nominated, placed, and displaced, from time to time, by Us, the said Treasurer, Council, and Company, and our Successors: Which Council of State shall consist, for the present, only of these persons, as are here inserted, *viz.* Sir *Francis Wyat*, Governor of *Virginia*, Captain *Francis West*, Sir *George Yeardley*, Knight, Sir *William Neuce*, Knight Marshal of *Virginia*, Mr. George *Sandys*, Treasurer, Mr. George *Thorpe*, Deputy of the College, Captain *Thomas Neuce*, Deputy for the Company, Mr. *Pawlet*, Mr. *Leech*, Captain *Nathaniel Powel*, Mr. *Christopher Davison*, Secretary, Dr. *Pots*, Physician to the Company, Mr. *Roger Smith*, Mr. *John Berkeley*, Mr. *John Rolfe*, Mr. *Ralph Hamer*, Mr. *John Pountis*, Mr. *Michael Lapworth*, Mr. *Harwood*, Mr. *Samuel Macock*. Which said Counsellors and Council we earnestly pray and desire, and in his Majesty's Name strictly charge and command, that (all Factions, Partialities, and sinister Respect laid aside (they bend their Care and Endeavours to assist the said Governor; first and principally, in the Advancement of the Honour and Service of God, and the Enlargement of his Kingdom amongst the Heathen People; and next, in erecting of the said Colony in due Obedience to his Majesty, and all lawful Authority from his Majesty's Directions; and lastly, in maintaining the said People in Justice and *Christian* Conversation amongst themselves, and in Strength and Ability to withstand their Enemies. And this Council, to be always, or for the most Part, residing about or near the Governor.

IV. The other Council, more generally to be called by the Governor, once Yearly, and no oftener, but for very extraordinary and important Occasions, shall consist, for the present, of the said Council of State, and of two Burgesses out of every Town, Hundred, or other particular Plantation, to be respectively chosen by the Inhabitants: Which Council shall be called The General Assembly, wherein (as also in the said Council of State) all Matters shall be decided, determined, and ordered, by the greater Part of the Voices then present; reserving to the Governor always a Negative Voice. And this General Assembly shall have free Power to treat, consult, and conclude, as well of all emergent Occasions concerning the Publick Weal of the said Colony and every Part thereof, as also to make, ordain, and enact such gen-

eral Laws and Orders, for the Behoof of the said Colony, and the good Government thereof, as shall, from time to time, appear necessary or requisite;

V. Whereas in all other Things, we require the said General Assembly, as also the said Council of State, to imitate and follow the Policy of the Form of Government, Laws, Customs, and Manner of Trial, and other Administration of Justice, used in the Realm of *England*, as near as may be, even as ourselves, by his Majesty's Letters Patent are required.

VI. Provided, that no Law or Ordinance, made in the said General Assembly, shall be or continue in Force or Validity, unless the same shall be solemnly ratified and confirmed, in a General Quarter Court of the said Company here in *England*, and so ratified, be returned to them under our Seal; It being our Intent to afford the like Measure also unto the said Colony, that after the Government of the said Colony shall once have been well framed, and settled accordingly . . . and the same shall have been so by us declared, no Orders of Court afterwards shall bind the said Colony, unless they be ratified in like Manner in the General Assemblies.

* * * * * * * *

No. 6. First Charter of Massachusetts

March 4/14, 1628/9

The attempt of the Dorchester Adventurers to establish a colony on Cape Ann, in 1623, as a base for fishing operations, failed; but there were a few scattered settlements in the region of Massachusetts Bay when, March 19/29, 1627/8, a grant for a land and trading company was obtained from the Council for New England. The patent was confirmed, with the addition of powers of government, by the royal charter of March 4/14, 1628/9. A local government, known as "London's Plantation in Massachusetts Bay in New England," was established at Salem, under the direction of John Endicott. In 1630 the charter and government of the colony were transferred to America, and the local government under Endicott was discontinued. The charter remained in force until 1684, when it was annulled by writ of *scire facias*.

References. — *Text* in *Records of the Governor and Company of the Massachusetts Bay in New England*, I., 3–19. The grant of 1627/8 is recited in the charter. Important contemporary documents and accounts are

collected in Young's *Chronicles of Massachusetts*. See also Winthrop's *History of New England* (Savage's ed.), I.; Winthrop's *Life and Letters of John Winthrop*, II.; Sainsbury's *Calendar of State Papers*, Colonial, I.

[The charter begins with a recital of the patent of 1620 to the Council for New England, and the subsequent grant by the Council, in March, 1627/8, to Sir Henry Rosewell and others, which last-mentioned grant is by this present charter confirmed, and continues:]

And further knowe yee, That . . . Wee . . . by theis presents doe . . . give and graunt unto the said Sir Henry Rosewell, Sir John Younge, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endecott, Symon Whetcombe, Isaack Johnson, Samuell Aldersey, John Ven, Mathewe Cradock, George Harwood, Increase Nowell, Richard Pery, Richard Bellingham, Nathaniel Wright, Samuell Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuell Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcrofte, theire heires and assignes, All that parte of Newe England in America which lyes and extendes betweene a great river there commonlie called Monomack river, alias Merrimack river, and a certen other river there called Charles river, being in the bottome of a certen bay there commonlie called Massachusetts, alias Mattachusetts, alias Massatusetts bay: And also all and singuler those landes and hereditaments whatsoever, lyeing within the space of three Englishe myles on the south parte of the saide river called Charles river, or of any or every parte thereof: And also all and singuler the landes and hereditaments . . . lyeing and being within the space of three Englishe myles to the southward of the southernmost parte of the said baye called Massachusetts . . . : And also all those landes and hereditaments . . . which lye and be within the space of three English myles to the northward of the saide river called Monomack, alias Merrymack, or to the northward of any and every parte thereof, and all landes and hereditaments . . . lyeing within the lymitts aforesaide, north and south, in latitude and bredth, and in length and longitude, of and within all the bredth aforesaide, throughout the mayne landes there from the Atlantick and westerne sea and ocean on the east parte, to the south sea on the west parte: . .

and also all islandes in America aforesaide, in the saide seas, or either of them, on the westerne or easterne coastes, or partes of the said tracts of landes hereby mentioned to be given and graunted . . ., and free libertie of fishing in or within any the rivers or waters within the boundes and lymytts aforesaid, and the seas thereunto adjoining: . . . [To be held in free and common socage, and paying one fifth part of all gold and silver ores.] And . . . wee will and ordeyne, That the saide Sir Henry Rosewell . . . [and others] . . ., and all such others as shall hereafter be admitted and made free of the Company and Society hereafter mentioned, shall . . . be . . . one body corporate and politique in fact and name, by the name of the Governor and Company of the Mattachusetts Bay in Newe England . . . And wee doe hereby . . . graunte, That . . . there shalbe one Governor, one Deputy Governor, and eighteene Assistants . . ., to be from tyme to tyme . . . chosen out of the freemen of the saide Company, for the tyme being, in such manner and forme as hereafter in theis presents is expressed. Which said officers shall applie themselves to take care for the best disposeing and ordering of the generall buysines and affaires of . . . the saide landes and premisses . . ., and the plantacion thereof, and the government of the people there. And . . . wee doe . . . nominate . . . the saide Mathewe Cradocke to be the first and present Governor of the said Company, and the saide Thomas Goffe to be Deputy Governor . . ., and the said Sir Richard Saltonstall, Isaack Johnson, Samuell Aldersey, John Ven, John Humfrey, John Endecott, Simon Whetcombe, Increase Noell, Richard Pery, Nathaniell Wright, Samuell Vassall, Theophilus Eaton, Thomas Adams, Thomas Hutchins, John Browne, George Foxcrofte, William Vassall, and William Pinchion to be the present Assistants . . ., to continue in the saide severall offices respectivelie for such tyme and in such manner as in and by theis presents is hereafter declared and appointed. [The Governor or Deputy Governor may give order for the assembling of the Company.] And that the said Governor, Deputie Governor, and Assistants . . . shall or maie once every moneth, or oftener at their pleasures, assemble, and houlde, and keepe a Courte or Assemblie of themselves, for the better ordering and directing of their affaires. [Seven or more Assistants, with the Governor or Deputy Governor, to be a

sufficient Court.] and that there shall or maie be held . . . , upon every last Wednesday in Hillary, Easter, Trinity, and Michas termes respectivelie for ever, one greate, generall, and solempe Assemblie, which foure Generall Assemblies shalbe stiled and called the Foure Greate and Generall Courts of the saide Company: In all and every or any of which saide Greate and Generall Courts soe assembled, Wee doe . . . graunte . . . That the Governor, or, in his absence, the Deputie Governor . . . and such of the Assistants and freemen . . . as shalbe present, or the greater nomber of them soe assembled, whereof the Governor or Deputie Governor and six of the Assistants, at the least to be seaven, shall have full power and authoritie to choose, nominate, and appointe such and soe many others as they shall thinke fitt, and that shall be willing to accept the same, to be free of the said Company and Body, and them into the same to admitt, and to elect and constitute such officers as they shall thinke fitt and requisite for the ordering, mannaging, and dispatching of the affaires of the saide Governor and Company. . . . And wee doe . . . ordeyne, That yearely once in the yeare for ever hereafter, namely, the last Wednesday in Easter tearme yearely, the Governor, Deputy Governor, and Assistants . . . , and all other officers of the saide Company, shalbe, in the Generall Court or Assembly to be held for that day or tyme, newly chosen for the yeare ensueing by such greater parte of the said Company for the tyme being, then and there present, as is aforesaide. . . . And wee doe . . . graunt . . . , That it shall . . . be lawfull to and for the Governor or Deputie Governor and such of the Assistants and Freemen of the said Company . . . as shalbe assembled in any of their Generall Courts aforesaide, or in any other Courtes to be specially summoned and assembled for that purpose, or the greater parte of them, (whereof the Governor or Deputie Governor and six of the Assistants, to be alwaies seaven), from tyme to tyme to make, ordeine, and establishe all manner of wholesome and reasonable orders, lawes, statutes, and ordinances, directions, and instructions not contrarie to the lawes of this our realme of England, aswell for setling of the formes and ceremonies of government and magistracy fitt and necessary for the said plantation and the inhabitants there, and for nameing and stiling of all sortes of officers, both superior and inferior, which they shall finde neede-

full for that governement and plantation, and the distinguishing and setting forth of the severall duties, powers, and lymytts of every such office and place, and the formes of such oathes warrantable by the lawes and statutes of this our realme of England as shalbe respectivelie ministred unto them, for the execution of the said severall offices and places, as also for the disposing and ordering of the elections of such of the said officers as shalbe annuall, and of such others as shalbe to succeede in case of death or removeall, and ministring the said oathes to the newe elected officers, and for impositions of lawfull fynes, mulcts, imprisonment, or other lawfull correction, according to the course of other corporations in this our realme of England, and for the directing, ruling, and disposeing of all other matters and thinges whereby our said people, inhabitants there, maie be soe religiously, peaceablie, and civilly governed, as their good life and orderlie conversation maie wynn and incite the natives of [that] country to the knowledg and obedience of the onlie true God and Savior of mankinde, and the Christian fayth, which, in our royall intention and the adventurers free profession, is the principall ende of this plantation. . . . PROVIDED also . . . , That theis presents shall not in any manner enure, or be taken to abridge, barr, or hinder any of our loving subjects whatsoever to use and exercise the trade of fishing upon that coast of New England in America by theis presents mentioned to be graunted. . . .

No. 7. Charter of Privileges to Patroons

June 7/17, 1629

THE government of the Dutch West India Company, chartered in 1621, was vested in five chambers, or boards, established in as many Dutch cities, with a board of nineteen for the exercise of general executive powers. Of the chambers, that of Amsterdam was the most important. The region known as New Netherland was not named in the charter, but was included within the jurisdiction of the Company. On the final organization of the Company under the charter, in 1623, New Netherland was made a province, and placed under the immediate control of the Amsterdam chamber. The continued unprofitableness, however, of the trade of New Netherland, except the fur trade, led to a change of policy; and the Charter of Privileges to patroons, drafted in March, 1628, but not adopted by the board of nineteen until June,

1629, was intended to encourage private individuals to establish settlements at various points on the Hudson and Delaware, or North and South, rivers. Numerous grievances, occasioned by friction between the patroons and the Company, were partially allayed by a new charter in 1640, restricting the area of the grants, and encouraging independent settlement; but the feudal privileges of the patroons were not interfered with. "Many of the old patroon estates long remained undivided, and the heirs of the founders claimed some semi-feudal privileges well into the nineteenth century"

REFERENCES. — *Text* in *Documents relative to the Colonial History of the State of New York*, II., 553–557. On the Dutch West India Company, see O'Callaghan's *History of New Netherland;* the charter of 1621 is in Hazard's *Historical Collections*, I., 121–131.

FREEDOMS AND EXEMPTIONS

GRANTED BY THE BOARD OF THE NINETEEN OF THE INCORPORATED WEST INDIA COMPANY, TO ALL PATROONS, MASTERS OR PRIVATE PERSONS WHO WILL PLANT COLONIES IN NEW NETHERLAND

* * * * * * * *

III. All such shall be acknowledged Patroons of New Netherland who shall, within the space of four years next after they have given notice to any of the Chambers of the Company here, or to the Commander or Council there, undertake to plant a Colonie there of fifty souls, upwards of fifteen years old; one-fourth part within one year, and within three years after the sending of the first, making together four years, the remainder, to the full number of fifty persons . . . ; but it is to be observed that the Company reserve the Island of the Manhattes to themselves.

* * * * * * * *

V. The Patroons, by virtue of their power, shall and may be permitted, at such places as they shall settle their Colonies, to extend their limits four leagues along the shore, that is, on one side of a navigable river, or two leagues on each side of a river, and so far into the country as the situation of the occupiers will permit; provided and conditioned that the Company keep to themselves the lands lying and remaining between the limits of Colonies, to dispose thereof, when and at such time as they shall think proper, in such manner that no person shall be allowed to come within seven or eight leagues of them without their consent, unless the situation of the land thereabout be such that the Com-

mander and Council, for good reasons, should order otherwise . . . ; the command of each bay, river or island, of the first settled Colonie, remaining, moreover, under the supreme jurisdiction of their High Mightinesses the States-General and the Company. . . .

VI. They shall forever possess and enjoy all the lands lying within the aforesaid limits, together with the fruits, rights, minerals, rivers and fountains thereof; as also the chief command and lower jurisdictions, fishing, fowling and grinding, to the exclusion of all others, to be holden from the Company as a perpetual inheritance, without it ever devolving again to the Company, and in case it should devolve, to be redeemed and repossessed with twenty guilders per Colonie, to be paid to this Company, at the Chamber here or to their Commander there, within a year and six weeks after the same occurs, each at the Chamber where he originally sailed from; and further, no person or persons whatsoever shall be privileged to fish and hunt but the Patroons and such as they shall permit. And in case any one should in time prosper so much as to found one or more cities, he shall have power and authority to establish officers and magistrates there, and to make use of the title of his Colonie, according to his pleasure and to the quality of the persons.

* * * * * * * *

X. The Patroons and colonists shall be privileged to send their people and effects thither, in ships belonging to the Company, provided they take the oath, and pay to the Company for bringing over the people, as mentioned in the first article and for freight of the goods, five per cent, ready money, to be reckoned on the prime cost of the goods here, in which is, however, not to be included such cattle and implements as are necessary for the cultivation and improvement of the lands, which the Company are to carry over without any reward, if there is room in their ships. . . .

* * * * * * * *

XII. Inasmuch as it is intended to people the Island of the Manhattes first, all fruits and wares that are produced on the lands situate on the North river, and lying thereabout, shall, for the present, be brought there before being sent elsewhere, excepting such as are, from their nature, unnecessary there, or such as cannot, without great loss to the owner thereof, be brought there, in

which case the owners thereof shall be obliged to give timely notice in writing of the difficulty attending the same to the Company here, or the Commander and Council there, that the same may be remedied as the necessity thereof shall be found to require.

XIII. All the Patroons of Colonies in New Netherland, and of Colonies on the Island of Manhattes, shall be at liberty to sail and traffic all along the coast, from Florida to Terra Neuf, provided that they do again return with all such goods as they shall get in trade to the Island of Manhattes, and pay five per cent duty to the Company, in order, if possible, that, after the necessary inventory of the goods shipped be taken, the same may be sent hither. And if it should so happen that they could not return, by contrary streams or otherwise, they shall, in such case, not be permitted to bring such goods to any other place but to these dominions, in order that, under the inspection of the Directors of the place where they may arrive, they may be unladen, an inventory thereof made, and the aforesaid duty of five per cent paid to the Company here, on pain, if they do the contrary, of the forfeiture of their goods so trafficked for, or the real value thereof.

* * * * * * * *

XV. It shall be also free for the aforesaid Patroons to traffic and trade all along the coast of New Netherland and places circumjacent, with such goods as are consumed there, and receive in return for them all sorts of merchandise that may be had there, except beavers, otters, minks, and all sorts of peltry, which trade the Company reserve to themselves. But the same shall be permitted at such places where the Company have no factories, conditioned that such traders shall be obliged to bring all the peltry they can procure to the Island of Manhattes, in case it may be, at any rate, practicable, and there deliver to the Director, to be by him shipped hither with the ships and goods; or, if they should come here without going there, then to give notice thereof to the Company, that a proper account thereof may be taken, in order that they may pay to the Company one guilder for each merchantable beaver and otter skin; the property, risk and all other charges remaining on account of the Patroons or owners.

XVI. All coarse wares that the Colonists of the Patroons there

shall consume, such as pitch, tar, weed-ashes, wood, grain, fish, salt, hearthstone and such like things shall be conveyed in the Company's ships, at the rate of eighteen guilders per last. . . .

XVII. For all wares which are not mentioned in the foregoing article, and which are not carried by the last, there shall be paid one dollar for each hundred pounds weight; and for wines, brandies, verjuice and vinegar, there shall be paid eighteen guilders per cask.

XVIII. The Company promises the colonists of the Patroons that they shall be free from customs, taxes, excise, imposts or any other contributions for the space of ten years; and after the expiration of the said ten years, at the highest, such customs as the goods pay here for the present.

* * * * * * * *

XXIII. Whosoever, whether colonists of Patroons for their Patroons, or free persons for themselves, or others for their masters, shall discover any shores, bays or other fit places for erecting fisheries, or the making of salt ponds, they may take possession thereof, and begin to work on them as their own absolute property, to the exclusion of all others. And it is consented to that the Patroons of colonists may send ships along the coast of New Netherland, on the cod fishery, and with the fish they catch, trade to Italy or other neutral countries, paying in such cases to the Company a duty of six guilders per last; and if they should come with their lading hither, they shall be at liberty to proceed to Italy, though they shall not, under pretext of this consent, or leave from the Company, carry any goods there, on pain of arbitrary punishment. . . .

XXIV. In case any of the colonists should, by his industry and diligence, discover any minerals, precious stones, crystals, marbles or such like, or any pearl fishery, the same shall be and remain the property of the Patroon or Patroons of such Colonie, giving and ordering the discoverer such premium as the Patroon shall beforehand have stipulated with such colonist by contract. And the Patroons shall be exempt from the payment of duty to the Company for the term of eight years, and pay only for freight, to bring them over, two per cent, and after the expiration of the aforesaid eight years, for duty and freight, the one-eighth part of what the same may be worth.

* * * * * * * *

XXVII. The Patroons and colonists shall in particular, and in the speediest manner, endeavor to find out ways and means whereby they may support a Minister and Schoolmaster, that thus the service of God and zeal for religion may not grow cool and be neglected among them, and they shall, for the first, procure a Comforter of the sick there.

* * * * * * * *

XXIX. The Colonists shall not be permitted to make any woolen, linen or cotton cloth, nor weave any other stuffs there, on pain of being banished, and as perjurers, to be arbitrarily punished.

XXX. The Company will use their endeavors to supply the colonists with as many Blacks as they conveniently can, on the conditions hereafter to be made, in such manner, however, that they shall not be bound to do it for a longer time than they shall think proper.

XXXI. The Company promise to finish the fort on the Island of the Manhattes, and to put it in a posture of defence without delay.

No. 8. Charter of Maryland

June 20/30, 1632

GEORGE CALVERT, first Lord Baltimore, had been a member of the Virginia Company, and, as one of the two principal secretaries of state, was a member of the Committee of the Council for Plantation Affairs. In 1620 he purchased a tract of land in Newfoundland, for which, under the name of Avalon, he obtained from James I., in 1623, a patent as proprietor. He visited his province in 1627, with the intention of remaining; but the advantages of the region had been exaggerated, and the climate was such as to discourage colonization. In 1629 he went to Virginia, but was obliged to leave on his refusal, as a Catholic, to take the oaths of allegiance and supremacy. Returning to England, he obtained from Charles I. a grant of land north of the Potomac. Baltimore died shortly before the patent passed the seals, and the charter was issued to his son, Cecil, second Lord Baltimore, June 20/30, 1632. The region granted to Baltimore had been included in the Virginia grant of 1609; but the revocation of the third charter in 1624 had left Virginia a royal province, with its unsettled portions subject to allotment at the pleasure of the king. Former members of the Virginia Company protested against the grant;

but the protest was ineffectual, and Virginia was directed to befriend the new colony.

References. — *Text*, Latin and English, in Bacon's *Laws of Maryland*. The early legislation of the colony may be followed in Bacon, and in *Maryland Archives*, I. See also Sainsbury's *Calendar of State Papers*, Colonial, I.

CHARLES . . . [&c.] . . .

II. Whereas our well beloved and right trusty Subject CÆCILIUS CALVERT, Baron of *BALTIMORE*, in our Kingdom of *Ireland*, Son and Heir of George Calvert, Knight, late Baron of Baltimore, in our said Kingdom of *Ireland*, treading in the Steps of his Father, being animated with a laudable, and pious Zeal for extending the *Christian Religion*, and also the Territories of our Empire, hath humbly besought Leave of Us, that he may transport, by his own Industry, and Expence, a numerous Colony of the *English* Nation, to a certain Region, herein after described, in a Country hitherto uncultivated, in the Parts of *America*, and partly occupied by Savages, having no Knowledge of the Divine Being, and that all that Region, with some certain Privileges, and Jurisdictions, appertaining unto the wholesome Government, and State of his Colony and Region aforesaid, may by our Royal Highness be given, granted, and confirmed unto him, and his Heirs.

III. Know ye therefore, that WE . . . by this our present CHARTER . . . do Give, Grant, and Confirm, unto the aforesaid CÆCILIUS, now Baron of *BALTIMORE*, his Heirs, and Assigns, all that Part of the Peninsula, or *Chersonese*, lying in the Parts of *America*, between the Ocean on the East, and the Bay of *Chesopeake* on the West, divided from the Residue thereof by a Right Line drawn from the Promontory, or Head-Land, called *Watkin's Point*, situate upon the Bay aforesaid, near the River of *Wighco*, on the West, unto the Main Ocean on the East; and between that Boundary on the South, unto that Part of the Bay of *Delaware* on the North, which lyeth under the Fortieth Degree of North Latitude from the Æquinoctial, where *New-England* is terminated. And all the Tract of that Land within the Metes underwritten (*that is to say*) passing from the said Bay, called *Delaware Bay*, in a right Line, by the Degree aforesaid, unto the true Meridian of the first Fountain of the River of *Pattowmack*, thence verging towards the South, unto the further Bank

of the said River, and following the same on the West and South, unto a certain Place called *Cinquack*, situate near the Mouth of the said River, where it disembogues into the aforesaid Bay of *Chesopeake*, and thence by the shortest Line unto the aforesaid Promontory, or Place, called *Watkin's Point;* so that the whole Tract of Land, divided by the Line aforesaid, between the Main Ocean, and *Watkin's Point*, unto the Promontory called *Cape-Charles*, and every the Appendages thereof, may entirely remain excepted for ever to US, our Heirs, and Successors.

IV. Also We do GRANT . . . unto the said Baron of *BALTIMORE* . . . all Islands and Islets within the Limits aforesaid, all and singular the Islands and Islets, from the Eastern Shore of the aforesaid Region, towards the East, which have been, or shall be formed in the Sea, situate within Ten marine Leagues from the said Shore; . . . And further more the PATRONAGES, and ADVOWSONS of all Churches which (with the increasing Worship and Religion of CHRIST) within the said Region . . . , hereafter shall happen to be built, together with Licence and Faculty of erecting and founding Churches, Chapels, and Places of Worship, in convenient and suitable Places, within the Premises, and of causing the same to be dedicated and consecrated according to the Ecclesiastical Laws of our Kingdom of *England*, with all, and singular such, and as ample Rights, Jurisdictions, Privileges, Prerogatives, Royalties, Liberties, Immunities, and royal Rights, and temporal Franchises whatsoever, as well by Sea as by Land, within the Region . . . aforesaid, to be had, exercised, used, and enjoyed, as any Bishop of *Durham*, within the Bishoprick or County Palatine of *Durham*, in our Kingdom of *England*, ever heretofore hath had, held, used, or enjoyed, or of Right could, or ought to have, hold, use, or enjoy.

V. And WE do by these Presents . . . MAKE, CREATE and CONSTITUTE HIM, the now Baron of *BALTIMORE*, and his Heirs, the TRUE and ABSOLUTE LORDS and PROPRIETARIES of the Region aforesaid, and of all other the Premises (except the before excepted) saving always the Faith and Allegiance and Sovereign Dominion due to US . . . ; TO HOLD of US . . . as of our Castle of *Windsor*, in our County of *Berks*, in free and common SOCCAGE, by Fealty only for all Services, and not *in capite*, nor by Knight's SERVICE, YIELDING therefore unto US . . . two

INDIAN ARROWS of those Parts, to be delivered at the said Castle of *Windsor*, every Year, on Tuesday in Easter-Week: And also the fifth Part of all Gold and Silver Ore, which shall happen from Time to Time, to be found within the aforesaid limits.

VI. Now, That the aforesaid Region, thus by us granted and described, may be eminently distinguished above all other Regions of that Territory, and decorated with more ample Titles, KNOW YE, that . . . WE do . . . ERECT and INCORPORATE the same into a PROVINCE, and nominate the same MARYLAND. . . .

VII. And forasmuch as WE have above made and ordained the aforesaid now Baron of *BALTIMORE*, the true LORD and *Proprietary* of the whole PROVINCE aforesaid, . . . WE . . . do grant unto the said now Baron . . . and to his Heirs, for the good and happy Government of the said PROVINCE, free, full, and absolute Power, by the tenor of these Presents, to Ordain, Make, and Enact LAWS, of what kind soever, according to their sound Discretions, whether relating to the Public State of the said PROVINCE, or the private Utility of Individuals, of and with the Advice, Assent, and Approbation of the Free-Men of the same PROVINCE, or of the greater Part of them, or of their Delegates or Deputies, whom WE will shall be called together for the framing of LAWS, when, and as often as Need shall require, by the aforesaid now Baron of *BALTIMORE* . . . , and in the Form which shall seem best to him or them, and the same to publish under the Seal of the aforesaid now Baron of *BALTIMORE* . . . and duly to execute the same upon all Persons, for the Time being, within the aforesaid PROVINCE, and the Limits thereof, or under his or their Government and Power, in Sailing towards *MARYLAND*, or thence Returning, Outward-bound, either to *England*, or elsewhere, whether to any other Part of Our, or of any foreign Dominions, wheresoever established, by the Imposition of Fines, Imprisonment, and other Punishment whatsoever; even if it be necessary, and the Quality of the Offence require it, by Privation of Member, or Life . . . So NEVERTHELESS, that the Laws aforesaid be consonant to Reason and be not repugnant or contrary, but (so far as conveniently may be) agreeable to the Laws Statutes, Customs and Rights of this Our Kingdom of *England*.

* * * * * * * *

XVIII. And furthermore . . . WE . . . do give . . . unto the aforesaid now Baron of *BALTIMORE* . . . full and absolute Licence, Power, and Authority . . . [to] assign, alien, grant, demise, or enfeoff so many, such, and proportionate Parts and Parcels of the Premises, to any Person or Persons willing to purchase the same, as they shall think convenient, to have and to hold . . . in Fee-simple, or Fee-tail, or for Term of Life, Lives, or Years; to hold of the aforesaid now Baron of *BALTIMORE* . . . by . . . such . . . Services, Customs and Rents OF THIS KIND, as to the same now Baron of *BALTIMORE* . . . shall seem fit and agreeable, and not immediately of US. . . .

XIX. We also . . . do . . . grant Licence to the same Baron of *BALTIMORE* . . . to erect any Parcels of Land within the Province aforesaid, into Manors, and in every of those Manors, to have and to hold a Court-Baron, and all Things which to a Court-Baron do belong; and to have and to keep View of Frank-Pledge, for the Conservation of the Peace and better Government of those Parts, by themselves and their Stewards, or by the Lords, for the Time being to be deputed, of other of those Manors when they shall be constituted, and in the same to exercise all Things to the View of Frank-Pledge belonging.

* * * * * * * *

XXI. And furthermore WE Will . . . that the said province, and the Freeholders or Inhabitants . . . of the said Colony or Country, shall not henceforth be held or reputed a Member or Part of the Land of *Virginia*, or of any other Colony already transported, or hereafter to be transported, or be dependent on the same, or subordinate in any kind of Government, from which WE do separate both the said Province, and Inhabitants thereof, and by these Presents do WILL to be distinct, and that they may be immediately subject to our Crown of *England*, and dependent on the same for ever.

XXII. [The charter to be construed in favor of Baltimore]: provided always, that no Interpretation thereof be made, whereby GOD'S holy and true Christian Religion, or the Allegiance due to US . . . , may in any wise suffer by Change, Prejudice, or Diminution. . . .

No. 9. Fundamental Orders of Connecticut

January 14/24, 1638/9

THE region of the Connecticut valley, originally included within the grant of 1620 to the Council for New England, became the subject of rival claims on the part of New Netherland, Massachusetts, and Plymouth. A patent for the territory west of the Narragansett River, given in March, 1631/2, by the Earl of Warwick, president of the Council for New England, to Lord Say and Sele, Lord Brook, and others, remained unused until 1635, when John Winthrop, the younger, arrived with a commission as governor, and built a fort at Saybrook, at the mouth of the Connecticut. The Dutch had already built a fort at Hartford, and in 1633 traders from Plymouth had established a post at Windsor. In the meantime, Massachusetts traders had explored the overland route from that colony, and their favorable reports encouraged the plan, already under consideration by inhabitants of Dorchester, Watertown, and Newtown (Cambridge), to remove to a region where greater religious and political freedom, as well as opportunity for material betterment, could be enjoyed. The plan of emigration, defeated in 1634, was approved by Massachusetts the next year, and a commission of government was granted by the General Court. In 1635–1636, settlements were planted at Windsor, Wethersfield, and Hartford. In 1637 the three towns assumed the control of their own affairs, and in January, 1638/9, drew up the constitution known as the Fundamental Orders of Connecticut — "the first written constitution known to history that created a government."

REFERENCES. — *Text* in *Connecticut Colonial Records*, I., 20–25. Warwick's patent of 1631, and Winthrop's commission, are in Trumbull's *History of Connecticut* (ed. 1797), I., 525–528.

Forasmuch as it hath pleased the Allmighty God by the wise disposition of his divyne providence so to Order and dispose of things that we the Inhabitants and Residents of Windsor, Harteford and Wethersfield are now cohabiting and dwelling in and uppon the River of Conectecotte and the Lands thereunto adjoyneing; And well knowing where a people are gathered togather the word of God requires that to mayntayne the peace and union of such a people there should be an orderly and decent Goverment established according to God, to order and dispose of the affayres of the people at all seasons as occation shall require; doe therefore assotiate and conjoyne our selves to be as one Publike State or Commonwelth; and doe, for our selves and our Successors and such as shall be adjoyned to us att any tyme hereafter, enter into

Combination and Confederation togather, to mayntayne and presearve the liberty and purity of the gospell of our Lord Jesus which we now professe, as also the disciplyne of the Churches, which according to the truth of the said gospell is now practised amongst us; As also in our Civell Affaires to be guided and governed according to such Lawes, Rules, Orders and decrees as shall be made, ordered & decreed, as followeth:—

1. It is Ordered . . . that there shall be yerely two generall Assemblies or Courts, the on [*one*] the second thursday in Aprill, the other the second thursday in September, following; the first shall be called the Courte of Election, wherein shall be yerely Chosen . . . soe many Magestrats and other publike Officers as shall be found requisitte: Whereof one to be chosen Governour for the yeare ensueing and untill another be chosen, and noe other Magestrate to be chosen for more than one yeare; provided allwayes there be sixe chosen besids the Governour; which being chosen and sworne according to an Oath recorded for that purpose shall have power to administer justice according to the Lawes here established, and for want thereof according to the rule of the word of God; which choise shall be made by all that are admitted freemen and have taken the Oath of Fidellity, and doe cohabitte within this Jurisdiction, (having beene admitted Inhabitants by the major part of the Towne wherein they live,) or the mayor parte of such as shall be then present.

* * * * * * * *

3. It is Ordered . . . that the Secretary shall not nominate any person, nor shall any person be chosen newly into the Magestracy which was not propownded in some Generall Courte before, to be nominated the next Election; and to that end yt shall be lawfull for ech of the Townes aforesaid by their deputyes to nominate any two whom they conceave fitte to be put to Election; and the Courte may ad so many more as they judge requisitt.

4. It is Ordered . . . that noe person be chosen Governor above once in two yeares, and that the Governor be alwayes a member of some approved congregation, and formerly of the Magestracy within this Jurisdiction; and all the Magestrats Freemen of this Commonwelth: and that no Magestrate or other publike officer shall execute any parte of his or their Office before they are severally sworne. . . .

5. It is Ordered . . . that to the aforesaid Courte of Election the severall Townes shall send their deputyes, and when the Elections are ended they may proceed in any publike searvice as at other Courts. Also the other Generall Courte in September shall be for makeing of lawes, and any other publike occation, which conserns the good of the Commonwelth.

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8. It is Ordered . . . that Wyndsor, Hartford and Wethersfield shall have power, ech Towne, to send fower of their freemen as their deputyes to every Generall Courte; and whatsoever other Townes shall be hereafter added to this Jurisdiction, they shall send so many deputyes as the Courte shall judge meete, a resonable proportion to the number of Freemen that are in the said Townes being to be attended therein; which deputyes shall have the power of the whole Towne to give their voats and alowance to all such lawes and orders as may be for the publike good, and unto which the said Townes are to be bownd.

9. It is ordered . . . that the deputyes thus chosen shall have power and liberty to appoynt a tyme and a place of meeting togather before any Generall Courte to advise and consult of all such things as may concerne the good of the publike, as also to examine their owne Elections, whether according to the order, and if they or the gretest parte of them find any election to be illegall they may seclud such for present from their meeting, and returne the same and their resons to the Courte; and if yt prove true, the Courte may fyne the party or partyes so intruding and the Towne, if they see cause, and give out a warrant to goe to a newe election in a legall way, either in parte or in whole. Also the said deputyes shall have power to fyne any that shall be disorderly at their meetings, or for not comming in due tyme or place according to appoyntment. . . .

10. It is Ordered . . . that every Generall Courte, except such as through neglecte of the Governor and the greatest parte of Magestrats the Freemen themselves doe call, shall consist of the Governor, or some one chosen to moderate the Court, and 4 other Magestrats at lest, with the mayor parte of the deputyes of the severall Townes legally chosen; and in case the Freemen or mayor parte of them, through neglect or refusall of the Governor and mayor parte of the magestrats, shall call a Courte, it shall

consist of the mayor parte of Freemen that are present or their deputyes, with a Moderator chosen by them: In which said Generall Courts shall consist the supreme power of the Commonwelth, and they only shall have power to make lawes or repeale them, to graunt levyes, to admitt of Freemen, dispose of lands undisposed of, to severall Townes or persons, and also shall have power to call ether Courte or Magestrate or any other person whatsoever into question for any misdemeanour, and may for just causes displace or deale otherwise according to the nature of the offence; and also may deale in any other matter that concerns the good of this commonwelth, excepte election of Magestrats, which shall be done by the whole boddy of Freemen.

In which Courte the Governour or Moderator shall have power to order the Courte to give liberty of spech, and silence unceasonable and disorderly speakeings, to put all things to voate, and in case the vote be equall to have the casting voice. But non of these Courts shall be adjorned or dissolved without the consent of the major parte of the Court.

11. It is ordered . . . that when any Generall Courte uppon the occations of the Commonwelth have agreed uppon any summe or sommes of mony to be levyed uppon the severall Townes within this Jurisdiction, that a Committee be chosen to sett out and appoynt what shall be the proportion of every Towne to pay of the said levy, provided the Committees be made up of an equall number out of each Towne.

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No. 10. Fundamental Articles of New Haven

June 4/14, 1639

A SETTLEMENT at New Haven was made in April, 1638, by a party of emigrants under the lead of John Davenport, a prominent nonconformist minister of London, and Theophilus Eaton, a wealthy London merchant and former deputy governor of the East India Company. Most of the party had arrived at Boston in the summer of 1637, and were offered strong inducements to remain in Massachusetts; but the religious condition of that colony, just emerging from the Hutchinsonian controversy, and a desire to found an independent state on a scriptural model, determined them to remove to Connecticut. For a year they lived under a "plantation covenant," apparently

an ecclesiastical as well as corporate agreement, in the meantime acquiring title to the land by deeds from the Indians. The Fundamental Articles were agreed upon June 4/14, 1639; in October the first general court was held, and the government established, with Eaton as governor.

REFERENCES. — *Text* in *New Haven Colonial Records* (1638–1649), pp. 11–17.

The 4th day of the 4th moneth called June 1639, all the free planters assembled together in a ge[neral [1]] meetinge to consult about settling civill Government according to God, and about the nomination of persons thatt might be founde by consent of all fittest in all respects for the foundation worke of a church w[hich] was intend to be gathered in Quinipieck. After solemne invocation of the name of God in prayer [for] the presence and help of his speritt, and grace in those weighty businesses, they were reminded of t[he] busines whereabout they mett [viz] for the establishment of such civill order as might be most p[leas]ing unto God, and for the chuseing the fittest men for the foundation worke of a church to be gather[ed]. For the better inableing them to discerne the minde of God and to agree accordingly concerning the establishment of civill order, Mr. John Davenport propounded divers quæres to them publiquely. . . .

This being earnestly pressed by Mr. Davenport, Mr. Robt. Newman was intreated to write in carracters and to read distinctly and audibly in the hearing of all the people whatt was propounded and accorded on that itt might appeare thatt all consented to matters propounded according to words written by him.

QUÆR. 1. Whether the Scripturs doe holde forth a perfect rule for the direction and government of all men in all duet[ies] which they are to performe to God and men as well in the government of famylyes and commonwealths as in matters of the chur.

This was assented unto by all, no man dissenting as was expressed by holding up of hands. Afterward itt was read over to them thatt they might see in whatt words their vote was expressed: They againe expressed their consent thereto by holdeing up their hands, no man dissenting.

QUÆR. 2. Whereas there was a covenant solemnly made by the whole assembly of free-planters of this plantation the first day of extraordenary humiliation which wee had after wee came together,

[1] Words and letters in brackets are obliterated or illegible in the original. — ED.

thatt as in matters thatt concerne the gathering and ordering of a chur. so likewise in all publique offices which concerne civill order, as choyce of magistrates and officers, makeing and repealing of lawes, devideing allottments of inheritance and all things of like nature we would all of us be ordered by those rules which the scripture holds forth to us. . . . Itt was demaunded whether all the free planters doe holde themselves bound by thatt covenant in all businesses of thatt nature which are expressed in the covenant to submitt themselves to be ordered by the rules held forth in the scripture.

This also was assented unto by all, and no man gainesaid itt. . . .

Quær. 3. Those who have desired to be received as free planters, and are settled in the plantation with a purp[ose,] resolution and desire thatt they may be admitted into chur. fellowship according to Christ as soone [as] God shall fitt them thereunto: were desired to express itt by holdeing up of hands: Accordingly a[ll] did expresse this to be their desire and purpose by holdeing up their hands twice, [viz] both att the [pro]posall of itt, and after when these written words were read unto them.

Quær. 4. All the free planters were called upon to expresse whether they held themselves bound to esta[blish] such civill order as might best conduce to the secureing of the purity and peace of the ordina[nces] to themselves and their posterity according to God. In answer hereunto they expressed by hold-[ing] up their hands twice as before. . . .

Then Mr. Davenport declared unto them by the scripture whatt kinde of persons might best be trusted with matters of government. . . . Having thus said he satt downe, praying the company freely to consider whether they would have [it] voted att this time or nott: After some space of silence Mr. Theophilus Eaton answered itt mi[ght] be voted, and some others allso spake to the same purpose, none att all opposeing itt. Then itt was propounded to vote.

Quær. 5. Whether Free Burgesses shalbe chosen out of chur. members they thatt are in the foundat[ion] worke of the church being actually free burgesses, and to chuse to themselves out of the li[ke] estate of church fellowship and the power of chuseing magistrates and officers from among themselves and the power off makeing and repealing lawes according to the worde, and the

devideing of inheritances and decideing of differences thatt may arise, and all the businesses of like nature are to be transacted by those free burgesses.

This was putt to vote and agreed unto by the lifting up of hands twice as in the former itt was done . . . and Mr. Robert Newman was desired to write itt as an order whereunto every one thatt hereafter should be admitted here as planters should submitt and testefie the same by subscribeing their names to the order, namely, that church members onely shall be free burgesses, and thatt they onely shall chuse magistrates & officers among themselves to have the power of transacting all the publique civill affayres of this Plantation, of makeing and repealing lawes, devideing of inheritances, decideing of differences thatt may arise and doeing all things or businesses of like nature.

This being thus settled as a foundamentall agreement concerning civill government. Mr. Davenport proceeded to propound some things to consideration aboute the gathering of a chur. And to prevent the blemishing of the first beginnings of the chur. worke, Mr. Davenport advised thatt the names of such as were to be admitted might be publiquely propounded, to the end thatt they who were most approved might be chosen, for the towne being cast into severall private meetings wherein they thatt dwelt nearest together gave their accounts one to another of Gods gracious worke upon them, and prayed together and conferred to their mutuall ediffication, sundry of them had knowledg one of another, and in every meeting some one was more approved of all then any other, For this reason, and to prevent scandalls, the whole company was intreated to consider whom they found fittest to nominate for this worke.

Quær. 6. Whether are you all willing and doe agree in thi- thatt twelve men be chosen thatt their fitnesse for the foundation worke may be tried, however there may be more named yett itt may be in their power who are chosen to reduce them to twelve, and itt be in the power of those twelve to chuse out of themselves seaven that shall be most approved of the major part to begin the church.

This was agreed upon by consent of all as was expressed by holdeing up of hands, and thatt so many as should be thought fitt for the foundation worke of the church shall be propounded

by the plantation, and written downe and passe without exception unlesse they had given publique scandall or offence, yett so as in case of publique scandall or offence, every one should have liberty to propound their exception att thatt time publiquely against any man that should be nominated when all their names should be writt downe, butt if the offence were private, thatt mens names might be tendered, so many as were offended were intreated to deale with the offender privately, and if he gave nott satisfaction, to bring the matter to the twelve thatt they might consider of itt impartially and in the feare of God. The names of the persons nominated and agreed upon were Mr. Theoph. Eaton, Mr. John Davenport, Mr. Robert Newman, Mr. Math. Gilbert, Mr. Richard Malbon, Mr. Nath: Turner, Eze: Chevers, Thomas Fugill, John Ponderson, William Andrewes, and Jer. Dixon. Noe exception was brought against any of those in publique, except one about takeing an excessive rate for meale which he sould to one of Pequanack in his need, which he confessed with griefe and declared thatt haveing beene smitten in heart and troubled in his conscience, he restored such a part of the price back againe with confession of his sin to the party as he thought himselfe bound to doe. And it being feared thatt the report of the sin was heard farther th[an] the report of his satisfaction, a course was concluded on to make the satisfaction known to as many as heard of the sinn. . . .

No. 11. Patent of Providence Plantations

March 14/24, 1643

In 1636 Roger Williams, lately banished from Massachusetts, established himself at Providence. A settlement was made at Portsmouth, under William Coddington, in March, 1637/8, and another at Newport in 1639. Warwick was planted in 1642/3, by Samuel Gorton and others. In 1643 Williams, through the influence of the Earl of Warwick, obtained a patent uniting the settlements at Providence, Portsmouth, and Newport, under the name of Providence Plantations. A government under the patent was not organized until May, 1647, at which time Warwick was admitted. The patent conferred liberal rights of self-government, but made no grant of land.

References. — *Text* in *Rhode Island Colonial Records*, I., 143–146. The

laws passed in 1647 are in *ib.*, I., 147–208. See also *Early Records of the Town of Providence*, I.; Staples's *Annals of the Town of Providence;* and bibliographical notes in Winsor's *Narr. and Crit. Hist.*, III., 376–380.

. . . Whereas . . . there is a Tract of Land . . . called by the Name of the Narraganset-Bay; bordering Northward and Northeast on the Patent of the Massachusetts, East and Southeast on Plymouth Patent, South on the Ocean, and on the West and Northwest by the Indians called Nahigganneucks, alias Narragansets; the whole Tract extending about Twenty-five English Miles unto the Pequot River and Country.

And whereas divers well affected and industrious English Inhabitants, of the Towns of Providence, Portsmouth, and Newport in the tract aforesaid, have adventured to make a nearer neighborhood and Society with the great Body of the Narragansets, which may in Time by the blessing of God upon their Endeavours, lay a sure Foundation of Happiness to all America. And have also purchased, and are purchasing of and amongst the said Natives, some other Places, which may be convenient both for Plantations, and also for building of Ships, Supply of Pipe Staves and other Merchandize. And whereas the said English, have represented their Desire . . . to have their hopeful Beginnings approved and confirmed, by granting unto them a Free Charter of Civil Incorporation and Government; . . . In due Consideration of the said Premises, the said Robert Earl of Warwick, . . . and the greater Number of the said Commissioners, . . . out of a Desire to encourage the good Beginnings of the said Planters, Do, by the Authority of the aforesaid Ordinance of the Lords and Commons, . . . grant . . . to the aforesaid Inhabitants of the Towns of Providence, Portsmouth, and Newport, a free and absolute Charter of Incorporation, to be known by the Name of the Incorporation of Providence Plantations, in the Narraganset-Bay, in New England. — Together with full Power and Authority to rule themselves, and such others as shall hereafter inhabit within any Part of the said Tract of land, by such a Form of Civil Government, as by voluntary consent of all, or the greater Part of them, they shall find most suitable to their Estate and Condition; and, for that End, to make and ordain such Civil Laws and Constitutions, and to inflict such

punishments upon Transgressors, and for Execution thereof, so to place, and displace Officers of Justice, as they, or the greatest Part of them, shall by free Consent agree unto. Provided nevertheless, that the said Laws, Constitutions, and Punishments, for the Civil Government of the said Plantations, be conformable to the Laws of England, so far as the Nature and Constitution of the place will admit. And always reserving to the said Earl, and Commissioners, and their Successors, Power and Authority for to dispose the general Government of that, as it stands in Relation to the rest of the Plantations in America as they shall conceive from Time to Time, most conducing to the general Good of the said Plantations, the Honour of his Majesty, and the Service of the State. . . .

No. 12. New England Confederation

May 19/29, 1643

The first definite suggestion of a confederation of the New England colonies appears to have been made in 1637, when certain magistrates and ministers from Connecticut held a conference on the subject with the Massachusetts authorities at Boston. A notice of this meeting was sent to Plymouth, but too late for that colony to be represented. A counter proposition from Massachusetts, in 1638, failed because of the refusal of Connecticut to allow the decision of a majority of the commissioners, in cases of dispute, to be final. The matter was again urged by Connecticut in 1639, in view of threatening reports from New Netherland; but, although favorably considered by Massachusetts, nothing came of it. Fear of an Indian war led to a joint proposal to Massachusetts, in 1640, from Rhode Island, Connecticut, and New Haven; but Massachusetts refused to treat with Rhode Island. Finally, in 1642, moved by the "sad distractions in England" and the renewed danger of an Indian war, the Massachusetts General Court appointed a committee to treat with the other colonies in regard to union. In May, 1643, the commissioners met at Boston, and agreed upon the articles following; but the representatives of Plymouth not having authority to conclude the negotiations at that time, the ratification of that colony was delayed until the first meeting of the commissioners, Sept. 4/14. Rhode Island was not a member of the confederation, and applications for admission, in 1644 and 1648, were refused, unless the Rhode Island settlements would acknowledge the jurisdiction of either Massachusetts or Plymouth. The importance of the confederation practi-

cally ceased after 1662, when New Haven was united with Connecticut; but the commissioners continued to hold occasional meetings until 1684.

REFERENCES. — *Text* in *New Haven Colonial Records*, 1653–1665, pp. 562–566. The records of the commissioners are in *Plymouth Colony Records*, IX., X. Frothingham, *Rise of the Republic*, 63, n. 2, gives a list of the meetings. See also Winthrop's *New England, passim;* Hubbard's *History of Massachusetts* (*Mass. Hist. Coll.*, Second Series, VI.), chap. 52.

Whereas we all came into these parts of *America*, with one and the same end and ayme, namely, to advance the Kingdome of our Lord Jesus Christ, and to enjoy the liberties of the Gospel, in purity with peace; and whereas in our settling (by a wise providence of God) we are further dispersed upon the Sea-Coasts, and Rivers, then was at first intended, so that we cannot (according to our desire) with convenience communicate in one Government, and Jurisdiction; and whereas we live encompassed with people of severall Nations, and strange languages, which hereafter may prove injurious to us, and our posterity: And forasmuch as the Natives have formerly committed sundry insolencies and outrages upon severall Plantations of the English, and have of late combined against us. And seeing by reason of the sad distractions in *England*, which they have heard of, and by which they know we are hindred both from that humble way of seeking advice, and reaping those comfortable fruits of protection which, at other times, we might well expect; we therefore doe conceive it our bounden duty, without delay, to enter into a present Consotiation amongst our selves, for mutuall help and strength in all our future concernments, that, as in Nation, and Religion, so, in other respects, we be, and continue, One, according to the tenour and true meaning of the ensuing Articles.

I. Wherefore it is fully Agreed and Concluded by and between the parties, or Jurisdictions [of Massachusetts, Plymouth, Connecticut and New Haven] That they all be, and henceforth be called by the name of, *The United Colonies of New-England.*

II. The said United Colonies for themselves, and their posterities doe joyntly and severally hereby enter into a firm and perpetuall league of friendship and amity, for offence and defence, mutuall advice and succour, upon all just occasions, both for preserving and propagating the truth, and liberties of the Gospel and for their own mutuall safety, and wellfare.

III. It is further agreed, That the Plantations which at present are, or hereafter shall be settled within the limits of the *Massachusets*, shall be forever under the Government of the *Massachusets*. And shall have peculiar Jurisdiction amongst themselves, as an intire body; and that *Plimouth*, *Connecticut*, and *New-Haven*, shall each of them, in all respects, have the like peculiar Jurisdiction, and Government within their limits. And in reference to the Plantations which already are setled, or shall hereafter be erected and shall settle within any of their limits respectively, provided that no other Jurisdiction shall hereafter be taken in, as a distinct head, or Member of this Confederation, nor shall any other either Plantation, or Jurisdiction in present being, and not already in combination, or under the Jurisdiction of any of these Confederates, be received by any of them, nor shall any two of these Confederates, joyne in one Jurisdiction, without consent of the rest. . . .

IV. It is also by these Confederates agreed, That the charge of all just Wars, whether offensive, or defensive, upon what part or Member of this Confederation soever they fall, shall both in men, provisions, and all other disbursements, be born by all the parts of this Confederation, in different proportions, according to their different abilities, in manner following, namely, That the Commissioners for each Jurisdiction, from time to time, as there shall be occasion, bring a true account and number of all the Males in each Plantation, or any way belonging to, or under their severall Jurisdictions, of what quality, or condition soever they be, from sixteen years old, to threescore, being inhabitants there. And that according to the different numbers, which from time to time shall be found in each Jurisdiction, upon a true, and just account, the service of men, and all charges of the war, be born by the poll: Each Jurisdiction, or Plantation, being left to their own just course, and custome, of rating themselves, and people, according to their different estates, with due respect to their qualities and exemptions among themselves, though the Confederation take no notice of any such priviledge. And that, according to the different charge of each Jurisdiction, and Plantation, the whole advantage of the War (if it please God so to blesse their endeavours) whether it be in Lands, Goods, or persons, shall be proportionably divided among the said Confederates.

V. It is further agreed, That if any of these Jurisdictions, or any Plantation under, or in Combination with them, be invaded by any enemy whomsoever, upon notice, and request of any three Magistrates of that Jurisdiction so invaded. The rest of the Confederates, without any further meeting or expostulation, shall forthwith send ayde to the Confederate in danger, but in different proportion, namely the *Massachusets* one hundred men sufficiently armed, and provided for such a service, and journey. And each of the rest five and forty men, so armed and provided, or any lesse number, if lesse be required, according to this proportion. But if such a Confederate may be supplyed by their next Confederate, not exceeding the number hereby agreed, they may crave help there, and seek no further for the present. The charge to be born, as in this Article is expressed. And at their return to be victualled, and supplied with powder and shot (if there be need) for their journey by that Jurisdiction which imployed, or sent for them. . . . But in any such case of sending men for present ayde, whether before or after such order or alteration, it is agreed, That at the meeting of the Commissioners for this Confederation, the cause of such war or invasion, be duly considered, and if it appear, that the fault lay in the party so invaded, that then, that Jurisdiction, or Plantation, make just satisfaction, both to the invaders, whom they have injuried, and bear all the charges of the war themselves. . . .

And further, if any Jurisdiction see any danger of an invasion approaching, and there be time for a meeting, That in such case, three Magistrates of that Jurisdiction may summon a meeting, at such convenient place, as themselves shall think meet, to consider, and provide against the threatened danger. . . .

VI. It is also agreed, That for the managing and concluding of all affaires proper to, and concerning the whole Confederation, two Commissioners shall be chosen by, and out of the foure Jurisdictions, namely two for the *Massachusets*, two for *Plimouth*, two for *Connecticut*, and two for *New-haven*, being all in Church-fellowship with us, which shall bring full power from their severall generall Courts respectively, to hear, examine, weigh, and determine all affaires of war, or peace, leagues, aydes, charges, and numbers of men for war, division of spoyles, or whatsoever is gotten by conquest, receiving of more confederates, or Plantations

into Combination with any of these Confederates, and all things of like nature, which are the proper concomitants, or consequences of such a Confederation, for amity, offence, and defence not intermedling with the Government of any of the Jurisdictions, which by the third Article, is preserved intirely to themselves. . . . It is further agreed, That these eight Commissioners shall meet once every year, besides extraordinary meetings, according to the fifth Article to consider, treat, and conclude of all affaires belonging to this Confederation, which meeting shall ever be the first *Thursday* in *September*. And that the next meeting after the date of these presents, which shall be accounted the second meeting, shall be at *Boston* in the *Massachusets*, the third at *Hartford*, the fourth at *New-haven*, the fifth at *Plimouth*, the sixth and seventh at *Boston;* and then *Hartford*, *New-haven*, and *Plymouth*, and so in course successively. If in the mean time, some middle place be not found out, and agreed on, which may be commodious for all the Jurisdictions.

* * * * * * * *

VIII. It is also agreed, That the Commissioners for this Confederation hereafter at their meetings, whether ordinary or extraordinary, as they may have Commission or opportunity, doe endeavour to frame and establish Agreements and Orders in generall cases of a civil nature, wherein all the Plantations are interested, for preserving peace amongst themselves, and preventing (as much as may be) all occasions of war, or differences with others, as about the free and speedy passage of Justice in each Jurisdiction, to all the Confederates equally, as to their own, receiving those that remove from one Plantation to another, without due Certificates, how all the Jurisdictions may carry it towards the *Indians*, that they neither grow insolent, nor be injuried without due satisfaction, least War break in upon the Confederates, through such miscarriages. It is also agreed, That if any Servant run away from his Master, into any other of these Confederated Jurisdictions, That in such case, upon the Certificate of one Magistrate in the Jurisdiction, out of which the said Servant fled, or upon other due proof, the said Servant shall be delivered either to his Master, or any other that pursues, and brings such Certificate, or proof. And that upon the escape of any Prisoner whatsoever, or fugitive, for any Criminall Cause,

whether breaking Prison, or getting from the Officer, or otherwise escaping, upon the Certificate of two Magistrates of the Jurisdiction out of which the escape is made, that he was a prisoner or such an offendor, at the time of the escape. The Magistrates, or some of them, of that Jurisdiction where for the present the said prisoner or fugitive abideth, shall forthwith grant such a Warrant, as the case will bear, for the apprehending of any such person, and the delivery of him into the hand of the Officer, or other person who pursueth him. And if help be required for the safe returning of any such offender, it shall be granted unto him that craves the same, he paying the charges thereof.

IX. And for that the justest Wars may be of dangerous consequence, especially to the smaller Plantations in these *United Colonies*, it is agreed, That neither the *Massachusets*, *Plymouth*, *Connecticut*, nor *New-Haven*, nor any of the Members of any of them, shall at any time hereafter begin undertake or engage themselves, or this Confederation, or any part thereof in any War whatsoever (sudden exigents with the necessary consequences thereof excepted, which are also to be moderated, as much as the case will permit) without the consent and agreement of the forenamed eight Commissioners, or at least six of them, as in the sixt Article is provided. . . .

* * * * * * * *

XI. It is further agreed, That if any of the Confederates shall hereafter break any of these presents Articles, or be any other way injurious to any one of the other Jurisdictions such breach of Agreement, or injury shalbe duly considered, and ordered by the Commissioners for the other Jurisdictions, that both peace, and this present Confederation, may be intirely preserved without violation.

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No. 13. Government of New Haven

October 27/November 6, 1643

INDEPENDENT settlements, similar to New Haven, were established at Guilford and Milford in 1639, and at Stamford and Southold (Long Island) in 1640. In 1643 these settlements united with New Haven in a representa-

tive government, under which the colony continued until 1662, when New Haven was incorporated with Connecticut under a royal charter.

REFERENCES. — *Text* in *New Haven Colonial Records*, 1638–1649, pp. 112–116.

Itt was agreed and concluded as a foundamentall order nott to be disputed or questioned hereafter, thatt none shall be admitted to be free burgesses in any of the plantations within this jurisdiction for the future, butt such planters as are members of some or other of the approved churches in New England, nor shall any butt such free burgesses have any vote in any election, (the six present freemen att Milforde enjoying the liberty with the cautions agreed,[1]) nor shall any power or trust in the ordering of any civill affayres, be att any time putt into the hands of any other then such church members, though as free planters, all have right to their inherritance & to comerce, according to such grants, orders and lawes as shall be made concerning the same.

2. All such free burgesses shall have power in each towne or plantation within this jurisdiction tc chuse fitt and able men, from amongst themselves, being church members as before, to be the ordinary judges, to heare and determine all inferior causes, whether civill or criminall, provided thatt no civill cause to be tryed in any of these plantation Courts in value exceed 20 [1], and thatt the punishment in such criminalls, according to the minde of God, revealed in his word, touching such offences, doe nott exceed stocking and whipping, or if the fine be pecuniary, thatt itt exceed nott five pounds. . . .

3. All such free burgesses through the whole jurisdiction, shall have vote in the election of all magistrates, whether Governor, Deputy Governor, or other magistrates, with a Treasurer, a Secretary and a Marshall, &c. for the jurisdiction . . . and these free burgesses may, att every election, chuse so many magistrates for each plantation, as the weight of affayres may require, and as they shall finde fitt men for thatt trust. . . .

4. All the magistrates for the whole jurisdiction shall meete twice a yeare att Newhaven, namely, the Munday immediately before the sitting of the two fixed Generall Courts hereafter mentioned, to keep a Court called the Court of Magistrates, for the

[1] See *New Haven Colonial Records*, 1638–1649, pp. 110, 111. — Ed.

tryall of weighty and capitall cases, whether civill or criminall, above those lymitted to the ordinary judges in the perticular plantations, and to receive and try all appeales brought unto them from the aforesaid Plantation Courts, and to call all the inhabitants, whether free burgesses, free planters or others, to account for the breach of any lawes established, and for other misdemeanours, and to censure them according to the quallity of the offence, . . . and all sentences in this court shall pass by the vote of the major part of magistrates therein, butt from this Court of Magistrates, appeales and complaints may be made and brought to the Generall Court as the last and highest for this jurisdiction. . . .

5. Besides the Plantation Courts and Court of Magistrates, their shall be a Generall Court for the Jurisdiction, which shall consist of the Governor, Deputy Governor and all the Magistrates within the Jurisdiction, and two Deputyes for every plantation in the Jurisdiction, which Deputyes shall from time to time be chosen against the approach of any such Generall Court, by the aforesaid free burgesses, and sent with due certifficate to assist in the same, all which, both Governor and Deputy Governor, Magistrates and Deputyes, shall have their vote in the said Court. This Generall Court shall alwayes sitt att Newhaven, (unless upon weighty occasions the Generall Court see cause for a time to sitt elsewhere,) and shall assemble twice every yeare, namely, the first Wednesday in Aprill, & the last Wednesday in October, in the later of which Courts, the Governor, the Deputy Governor and all the magistrates for the whole jurisdiction with a Treasurer, a Secretary and Marshall, shall yearely be chosen by all the free burgesses before mentioned, besides which two fixed courts, the Governor, or in his absence, the Deputy Governor, shall have power to summon a Generall Court att any other time, as the urgent and extraordinary occasions of the jurisdiction may require, and att all Generall Courts, whether ordinary or extraordinary, the Governor and Deputy Governor, and all the rest of the magistrates for the jurisdiction, with the Deputyes for the severall plantations, shall sitt together, till the affayres of the jurisdiction be dispatched or may safely be respited, . . . which Generall Court shall, with all care and dilligence provide for the maintenance of the purity of religion, and shall suppress the

contrary, according to their best light from the worde of God, and all wholsome and sound advice which shall be given by the elders and churches in the jurisdiction, so farr as may concerne their civill power to deale therein.

Seconly, they shall have power to mak and repeale lawes, and, while they are in force, to require execution of them in all the severall plantations.

Thirdly, to impose an oath upon all the magistrates, for the faithfull discharge of the trust comitted to them, according to their best abilityes, and to call them to account for the breach of any lawes established, or for other misdemeanors, and to censure them, as the quallity of the offence shall require.

Fowerthly, to impose and [*an*] oath of fidelity and due subjection to the lawes upon all the free burgesses, free planters, and other inhabitants within the whole jurisdiction.

5ly to settle and leivie rates and contributions upon all the severall plantations, for the publique service of the jurisdiction.

6ly, to heare and determine all causes, whether civill or criminall, which by appeale or complaint shall be orderly brought unto them from any of the other Courts, or from any of the other plantations, In all which, with whatsoever else shall fall within their cognisance or judicature, they shall proceed according to the scriptures, which is the rule of all rightous lawes and sentences, and nothing shall pass as an act of the Generall Court butt by the consent of the major part of magistrates, and the greater part of Deputyes.

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No. 14. Maryland Toleration Act

April, 1649

PRACTICAL religious toleration existed in Maryland from the first, although for some years the Jesuits were the only clergy in the colony. The Puritan party, however, increased; and the success of Parliament in its struggle with the king forced Baltimore not only to protect the Catholics, but also to guard against the charge that Maryland was a Catholic colony. To that end, in 1648 he removed the governor, Thomas Greene, a Catholic, and appointed William Stone of Virginia, a Protestant and an adherent of the Parliamentary

cause. With the new commissions for the governor and council, Baltimore also sent drafts of sixteen proposed laws, one of which, apparently, was the Toleration Act. The act was passed by an assembly the majority of whom were probably Catholics, held at St. Mary's, April 2–21, 1649. A proviso in Stone's commission, forbidding him to assent to the repeal of any law, past or future, concerning religion, was designed to prevent later interference. In 1654, when the Puritans gained control, the protection hitherto accorded to Catholics was withdrawn; but the act of 1649 was revived in 1658, on the restoration of Baltimore's authority, and was incorporated in the revision of the laws made in 1676. An order of 1659, imposing penalties upon Quakers, seems not to have been enforced.

References. — *Text* in Browne's *Archives of Maryland*, I., 244–247. On the general subject of toleration in Maryland, see references in Winsor's *Narr. and Crit. Hist.*, III., 560–562.

An Act Concerning Religion

[The first part of the act provides for the punishment of blasphemy and Sabbath-breaking, and of such persons as shall call any one within the Province "an heretick, Scismatick, Idolator, puritan, Independant, Prespiterian popish prest, Jesuite, Jesuited papist, Lutheran, Calvenist, Anabaptist, Brownist, Antinomian, Barrowist, Roundhead, Separatist, or any other name or terme in a reproachfull manner relating to matter of Religion."]

And whereas the inforceing of the conscience in matters of Religion hath frequently fallen out to be of dangerous Consequence in those commonwealthes where it hath been practised, And for the more quiett and peaceable governement of this Province, and the better to preserve mutuall Love and amity amongst the Inhabitants thereof. Be it Therefore . . . enacted (except as in this present Act is before Declared and sett forth) that noe person or persons whatsoever within this Province, or the Islands, Ports, Harbors, Creekes, or havens thereunto belonging professing to believe in Jesus Christ, shall from henceforth bee any waies troubled, Molested or discountenanced for or in respect of his or her religion nor in the free exercise thereof within this Province or the Islands thereunto belonging nor any way compelled to the beleife or exercise of any other Religion against his or her consent, soe as they be not unfaithfull to the Lord Proprietary, or molest or conspire against the civill Government established or to bee established in this Province under him or his heires. And that all & every person and persons that shall

presume Contrary to this Act and the true intent and meaning thereof directly or indirectly either in person or estate willfully to wrong disturbe trouble or molest any person whatsoever within this Province professing to beleive in Jesus Christ for or in respect of his or her religion or the free exercise thereof within this Province other than is provided for in this Act that such person or persons soe offending, shalbe compelled to pay trebble damages to the party soe wronged or molested, and for every such offence shall also forfeit 20^{s} sterling in money or the value thereof . . ., Or if the partie soe offending as aforesaid shall refuse or bee unable to recompense the party soe wronged, or to satisfy such ffyne or forfeiture, then such Offender shalbe severely punished by publick whipping & imprisonment during the pleasure of the Lord proprietary, or his Leiuetenant or cheife Governor of this Province for the tyme being without baile or maineprise. . . .

No. 15. First Navigation Act

1660

Under the early colonial charters, the American colonies were generally exempted, either wholly or for a term of years, from the operation of the various acts for the regulation of trade then in force. The activity of the Dutch, however, gradually secured to that nation the virtual control of the colonial carrying trade. To regain this trade for the English, Parliament, in 1645, passed the first of a long series of acts and ordinances commonly spoken of collectively as the Navigation Acts. The ordinance of 1645 prohibited the importation into England, in other than English vessels manned by English seamen, of whale oil and other products of the whale fisheries. An ordinance of the following year restricted the foreign trade of the colonies to English bottoms. In 1649 the importation into England, Ireland, "or any of the dominions thereof," of French wines, wool, and silk was prohibited. In 1650, Virginia and certain of the West India colonies, where opposition to Puritanism had broken out, were declared to be in rebellion; and in order "to hinder the carrying over of any such persons as are enemies to this Commonwealth, or that may prove dangerous to any of the English plantations in America," foreign vessels were forbidden to trade with the colonies, save under license from Parliament or the Council of State. An act of 1651 embodied "a policy of coercion pure and simple," forbidding the importation of products of Asia, Africa, or America into Great Britain or the British colonies except in British or colonial vessels;

restricting the importation of European products to British vessels, or vessels of the country where the goods were produced or of the port from which they were usually shipped; limiting the trade in fish to British or colonial vessels; and excluding foreign vessels from the English coasting trade. The act of 1660, usually known as the First Navigation Act, embodied, in more systematic form, the important provisions of earlier acts, with the object of protecting both English and colonial shipping, and exploiting the colonial trade for the benefit of the mother country. As the act was passed by the Convention Parliament, it was confirmed in 1661 by the first Parliament, known technically as the thirteenth, regularly assembled after the restoration of Charles II.

REFERENCES. — *Text* in *Statutes of the Realm*, V., 246–250. The act is cited as 12 Car. II., c. 18. On the history and effects of the Navigation Acts, as touching America, see Beer's *Commercial Policy of England towards the American Colonies*, in Columbia Coll. *Studies*, III., No. 2.

AN ACT for the Encourageing and increasing of Shipping and Navigation.

[I.] For the increase of Shiping and incouragement of the Navigation of this Nation, wherin under the good providence and protection of God the Wealth Safety and Strength of this Kingdome is soe much concerned Bee it Enacted . . . That from and after . . . [December 1, 1660] . . ., and from thence forward noe Goods or Commodities whatsoever shall be Imported into or Exported out of any Lands Islelands Plantations or Territories to his Majesty belonging or in his possession or which may hereafter belong unto or be in the possession of His Majesty His Heires and Successors in Asia Africa or America in any other Ship or Ships Vessell or Vessells whatsoever but in such Ships or Vessells as doe truely and without fraude belong onely to the people of England or Ireland Dominion of Wales or Towne of Berwicke upon Tweede, or are of the built of, and belonging to any of the said Lands Islands Plantations or Territories as the Proprietors and right Owners therof and wherof the Master and three fourthes of the Marriners at least are English[1] under the penalty of the Forfeiture and Losse of all the

[1] Question having arisen in regard to the definition of English built ships and English mariners in this act, these terms were further defined by an act of 1662, 14 Car. II., c. 11, sect. 5: "And that no Forreign built Ship (that is to say) not built in any of His Majesties Dominions of Asia Africa or America or other then such as shall (bona fide) be bought before . . . [October 1, 1662,] . . .

Goods and Commodityes which shall be Imported into, or Exported out of, any the aforesaid places in any other Ship or Vessell, as alsoe of the Ship or Vessell with all its Guns Furniture Tackle Ammunition and Apparell. . . .

* * * * * * * *

[III.] And it is further Enacted . . . that noe Goods or Commodityes whatsoever of the growth production or manufacture of Africa Asia or America or of any part thereof . . . be Imported into England Ireland or Wales Islands of Guernsey or Jersey or Towne of Berwicke upon Tweede in any other Ship or Ships Vessell or Vessels whatsoever, but in such as doe truely and without fraude belong onely to the people of England or Ireland, Dominion of Wales or Towne of Berwicke upon Tweede or of the Lands Islands Plantations or Territories in Asia Africa or America to his Majesty belonging as the proprietors and right owners therof, and wherof the Master and three fourthes at least of the Mariners are English under the penalty of the forfeiture of all such Goods and Commodityes, and of the Ship or Vessell in which they were Imported with all her Guns Tackle Furniture Ammunition and Apparell. . . .

[IV.] And it is further Enacted . . . that noe Goods or Commodityes that are of forraigne growth production or manufacture and which are to be brought into England Ireland Wales, the Islands of Guernsey & Jersey or Towne of Berwicke upon Tweede in English built shiping, or other shiping belonging to some of the aforesaid places, and navigated by English Mariners as abovesaid shall be shiped or brought from any other place or Places, Country or Countries but onely from those of their said Growth Production or Manufacture, or from those Ports where the said Goods and Commodityes can onely or are or usually have beene first shiped for transportation and from none other Places or Countryes under the penalty of the forfeiture of all such of the aforesaid Goods as shall be Imported from any other place

next ensuing and expresly named in the said List shall enjoye the priviledge of a Ship belonging to England or Ireland although owned or manned by English (except such Ships only as shall be taken at Sea by Letters of Mart or Reprizal and Condemnation made in the Court of Admiralty as lawfull Prize) but all such Ships shall be deemed as Aliens Ships . . . it is to be understood that any of His Majesties Subjects of England Ireland and His Plantations are to bee accounted English and no others. . . ." — Ed.

or Country contrary to the true intent and meaning hereof, as alsoe of the ship in which they were imported with all her Guns Furniture Ammunition Tackle and Apparel. . . .

[VI.] [Foreign vessels excluded from the English coasting trade.]

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[VIII.] And it is further Enacted . . . That noe Goods or Commodityes of the Growth Production or Manufacture of Muscovy or of any the Countryes . . . to the Great Duke or Emporer of Muscovia or Russia belonging, As alsoe that noe sorts of Masts Timber or boards noe forraigne Salt Pitch Tar Rozin Hempe or Flax Raizins Figs Prunes Olive Oyles noe [sort [1]] of Corne or Graine Sugar Pot-ashes Wines Vinegar or Spirits called Aqua-vite or Brandy Wine shall from and after . . . [April 1, 1661] . . . be imported into England Ireland Wales or Towne of Berwicke upon Tweede in any Ship or Ships Vessel or Vessels whatsoever but in such as doe truely and without fraude belong to the people therof or of some of them as the true Owners and proprietors therof, and wherof the Master and Three Fourths of the Mariners at least are English, and that noe Currants, nor Commodityes of the growth production or Manufacture of any the Countryes . . . to the Othoman or Turkish Empire belonging shall from and after . . . [September 1, 1661] . . . be imported into any the forementioned places in any Ship or Vessel, but which is of English built and navigated as aforesaid and in noe other, except onely such forraigne ships and vessels as are of the built of that Country or place of which the said Goods are the growth production or Manufacture respectively, or of such Port where the said Goods can onely be or most usually are first shiped for transportation, and wherof the Master and three Fourths of the Mariners at least are of the said Country [and [2]] place under the penalty and forfeiture of Ship and Goods. . . .

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[XVIII.] And it is further Enacted . . . That from and after . . . [April 1, 1661] . . . noe Sugars Tobaccho Cotton Wool Indicoes Ginger Fustick or other dyeing wood of the Growth Pro-

[1] *sorts* in the original Ms.
[2] *or* in the original Ms.

duction or Manufacture of any English Plantations in America Asia or Africa shall be shiped carryed conveyed or transported from any of the said English Plantations to any Land Island Territory Dominion Port or place whatsoever other then to such [[1]] English Plantations as doe belong to His Majesty . . . or to the Kingdome of England or Ireland or Principallity of Wales or Towne of Berwicke upon Tweede there to be laid on shore under the penalty of the Forfeiture of the said Goods or the full value thereof, as alsoe of the Ship with all her Guns Tackle Apparel Ammunition and Furniture. . . .

[XIX.] And be it further Enacted . . . That for every Ship or Vessel which from and after . . . [December 25, 1660] . . . shall set saile out of, or from England Ireland Wales or Towne of Berwicke upon Tweede for any English Plantation in America Asia [or] Africa sufficient bond shall be given with one surety to the cheife Officers of the Custome house, of such Port or place from whence the said Ship shall set saile . . . That in case the said Ship or Vessel shall loade any of the said Commodityes at any of the said English Plantations, that the same Commodityes shall be by the said ship brought to some Port of England Ireland Wales, or to the Port or Towne of Berwicke upon Tweede and shall there unload and put on shore the same, the danger of the Seas onely excepted, And for all ships coming from any other Port or Place to any of the aforesaid plantations who by this Act are permited to trade there, that the Governour of such English plantation shall before the said Ship or Vessel be permited to loade on board any of the said Commodityes take Bond in manner and to the value aforesaid for each respective Ship or Vessel, That such Ship or Vessell shall carry all the aforesaid Goods that shall be laden on board in the said ship to some other of His Majestyes English Plantations, or to England Ireland Wales or Towne of Berwicke upon Tweede . . . [under penalty of forfeiture of the vessel, &c.]. . . .

[1] The Ms. inserts *other*.

No. 16. Charter of Connecticut

April 23/May 3, 1662

In May, 1661, the General Court of Connecticut appointed a committee to prepare a petition for a royal charter. Governor Winthrop, to whom the negotiations were intrusted, had the influential support of Lord Say and Sele and the Earl of Manchester; and in April, 1662, the charter was granted. The boundaries, as defined by the charter, included New Haven. The delay of the latter colony in proclaiming Charles II., and its tender treatment of the regicides, had brought it into disfavor with the king; and it now, under the lead of Davenport, resisted annexation and appealed to the Commissioners of the United Colonies. But the conquest of New Netherland by the English, in 1664, and the grant to the Duke of York of territory as far east as the Connecticut River, hastened submission; and in December of the latter year a committee was appointed to arrange for the union. A *quo warranto* was issued against the Connecticut charter in 1684, but judgment was not entered. When Andros demanded the charter, in 1687, it was secreted, and remained hidden until 1689, when, upon the deposition of Andros, government under the charter was resumed. The State constitution of 1776 continued the charter in force, with a few changes, and it remained the fundamental law of Connecticut until the adoption of a new constitution in 1818.

References. — *Text* in *Connecticut Colonial Records*, II., 3–11. Winthrop's instructions, the address to the King, and the letter to the Earl of Manchester, are in *ib.*, I., 579–585. For the proceedings in New Haven, see the *New Haven Colonial Records*, 1653–1665, *passim.*

Charles the Second, [&c.] **Whereas** . . . We have byn informed by the humble Petition of our Trusty and welbeloved John Winthrop, John Mason, Samuell Willis, Henry Clerke, Mathew Allen, John Tappen, Nathan Gold, Richard Treate, Richard Lord, Henry Woolicot, John Talcott, Daniell Clerke, John Ogden, Thomas Wells, Obedias Brewen, John Clerke, Anthony Haukins, John Deming, and Mathew Camfeild, being Persons Principally interested in our Colony or Plantation of Conecticutt in New England, that the same Colony or the greatest parte thereof was purchased and obteyned for greate and valuable considerations, And some other parte thereof gained by Conquest and with much difficulty, and att the onely endeavours, expence and Charge of them and their Associates, and those under whome they Clayme, Subdued and improved, and thereby become a considerable enlargement and addition of our Do-

minions and interest there, — **Now Know yea**, that . . . **wee** . . . by theis presents . . . **Doe** Ordeine, Constitute and Declare That they, the said John Winthrop . . . [and others] . . ., and all such others as now are or hereafter shall bee Admitted and made free of the Company and Society of our **Collony** of Conecticut in America, shall . . . bee one Body Corporate and Pollitique in fact and name, by the Name of Governour and Company of the English Collony of Conecticut in New England in America; . . . **And** further, wee . . . **Doe** Declare . . . that for the better ordering and manageing of the affaires and businesse of the said Company and their Successors, there shall be one Governour, one Deputy Governour and Twelve Assistants, to bee from tyme to tyme Constituted, Elected and Chosen out of the Freemen of the said Company for the tyme being, in such manner and forme as hereafter in these presents is expressed; which said Officers shall apply themselves to take care for the best disposeing and Ordering of the Generall busines and affaires of and concerning the lands and hereditaments herein after mentioned to bee graunted, and the Plantation thereof and the Government of the People thereof. And . . . **Wee doe** . . . appoint the aforesaid John Winthrop to bee the first and present Governour of the said Company; And the said John Mason to bee the Deputy Governour; And the said Samuell Willis, Mathew Allen Nathan Gold, Henry Clerke, Richard Treat, John Ogden, Thomas Tappen, John Talcott, Thomas Wells, Henry Woolcot, Richard Lord and Daniell Clerke to bee the Twelve present Assistants of the said Company; . . . **And** further, wee . . . **Doe** Ordaine . . . that the Governour of the said Company for the tyme being, or, in his absence by occasion of sicknes, or otherwise by his leave or permission, the Deputy Governour . . ., shall and may . . . give Order for the assembling of the said Company and calling them together to Consult and advise of the businesse and Affaires of the said Company, And that for ever hereafter, Twice in every yeare, (That is to say,) on every second Thursday in October and on every second Thursday in May, or oftener, in Case it shall be requisite, The Assistants and freemen of the said Company, or such of them (not exceeding twoe Persons from each place, Towne or Citty) whoe shall bee from tyme to tyme thereunto Elected or Deputed by the major

parte of the freemen of the respective Townes, Cittyes and Places for which they shall bee soe elected or Deputed, shall have a generall meeting or Assembly, then and their to Consult and advise in and about the Affaires and businesse of the said Company; And that the Governour, or . . . Deputy Governour . . ., and such of the Assistants and freemen of the said Company as shall be soe Elected or Deputed and bee present att such meeting or Assembly, or the greatest number of them, whereof the Governour or Deputy Governour and Six of the Assistants, at least, to bee Seaven, shall be called the Generall Assembly, and shall have full power and authority to alter and change their dayes and tymes of meeting or Generall Assemblies for Electing the Governour, Deputy Governour and Assistants or other Officers, or any other Courts, Assemblies or meetings, and to Choose, Nominate and appoint such and soe many other Persons as they shall thinke fitt and shall bee willing to accept the same, to bee free of the said Company and Body Politique, and them into the same to Admitt and to Elect, and Constitute such Officers as they shall thinke fitt and requisite for the Ordering, mannageing and disposeing of the Affaires of the said Governour and Company and their Successors. **And wee doe** hereby . . . Ordeine, that once in the yeare . . ., namely, the said Second Thursday in May, the Governour, Deputy Governour and Assistants of the said Company and other Officers of the said Company, or such of them as the said Generall Assembly shall thinke fitt, shall bee, in the said Generall Court and Assembly to bee held from that day or tyme, newly Chosen for the yeare ensuing, by such greater part of the said Company for the tyme being then and there present. . . . **And Knowe yee further**, That Wee . . . **Doe** . . . Graunt . . . unto the said Governor and Company and their Successors, **All** that parte of our Dominions in Newe England in America bounded on the East by Norrogancett River, comonly called Norrogancett Bay, where the said River falleth into the Sea, and on the North by the lyne of the Massachusetts Plantation, and on the South by the Sea, and in longitude as the lyne of the Massachusetts Colony, runinge from East to West, (that is to say,) from the said Narrogancett Bay on the East to the South Sea on the West parte, with the Islands thereunto adjoyneinge. . . .

No. 17. First Charter of Carolina

March 24/April 3, 1662/3

THE region later known as Carolina had been included in the original Virginia grant of 1606; but no permanent settlements had been made, and on the revocation of the third Virginia charter, in 1624, the territory became subject to the disposal of the Crown. In 1629, Sir Robert Heath, then attorney-general, received from Charles I. a grant of the region south of Virginia, between 31° and 36° north latitude, under the name of Carolana; but no use was made of the grant, and no further attempt was made to develop the country until the grant of a charter to Clarendon and his associates, in March, 1662/3. An order in council of Aug. 12/22, 1663, declared the Heath patent void for non-user; but claims under it continued to be urged until 1768, when the descendants of Daniel Coxe, of New Jersey, to whom the patent had been transferred in 1696, received from the Crown a grant of 100,000 acres of land in New York in satisfaction of their claim.

REFERENCES. — *Text* in *Statutes at Large of South Carolina* (Cooper's ed., 1836), I., 22–31. The Heath grant is in *Colonial Records of North Carolina*, I., 1–13. For the documentary sources see, beside the *Records*, Carroll's *Historical Collections of South Carolina;* Sainsbury's *Calendar of State Papers*, Colonial, V., VI. On the early history of South Carolina, McCrady's *History of South Carolina under the Proprietary Government* is of prime importance.

CHARLES THE SECOND, [&c.]. . . .

1st. WHEREAS our right trusty, and right well beloved Cousins and Counsellors, *Edward*, Earl of Clarendon, our high Chancellor of England, and *George*, Duke of Albemarle, Master of our horse and Captain General of all our Forces, our right trusty and well beloved *William* Lord Craven, *John* Lord Berkley, our right trusty and well beloved Counsellor, *Anthony* Lord Ashley, Chancellor of our Exchequer, Sir *George Carteret*, Knt. and Baronet, Vice Chamberlain of our household, and our trusty and well beloved Sir *William Berkley*, Knt. and Sir *John Colleton*, Knight and Baronet, . . . have humbly besought leave of us by their industry and charge, to transport and make an ample Colony of our subjects, natives of our Kingdom of England, and elsewhere within our Dominions, unto a certain country hereafter described, in the parts of America not yet cultivated or planted, and only inhabited by some barbarous people, who have no knowledge of Almighty God.

2d. And *whereas* the said Edward, Earl of Clarendon . . . [and others] . . . have humbly besought us to . . . grant . . . unto them and their heirs, the said country, with Priviledges and Jurisdictions requisite for the good government and safety thereof: KNOW YE, therefore, that we, favouring the pious and noble purpose of the said Edward Earl of Clarendon . . . [and others] . . . by this our present Charter . . . do Give, Grant and Confirm unto the said Edward Earl of Clarendon . . . [and others] . . . all that territory or tract of ground, scituate, lying and being within our dominions of America, extending from the North end of the Island called Lucke-Island, which lieth in the Southern Virginia Seas, and within six and thirty degres of the Northern Latitude, and to the West as far as the South Seas, and so Southerly as far as the river St. Matthias, which bordereth upon the coast of Florida, and within one and thirty degrees of Northern Latitude, and so west in a direct line as far as the South seas aforesaid. . . .

3d. And furthermore, the Patronage and Advowsons of all the Churches and Chapels, which as Christian Religion shall increase within the Country . . . shall happen hereafter to be erected, together with license and power to build and found Churches, Chappels and Oratories, in convenient and fit places, within the said bounds and limits, and to cause them to be dedicated and consecrated according to the Ecclesiastical laws of our Kingdom of England, together with all and singular the like, and as ample Rights, Jurisdictions, Priviledges, Prerogatives, Royalties, Liberties, Immunities and Franchises of what kind soever, within the Countries, Isles, Islets, and Limits aforesaid.

4th. To have, use, exercise and enjoy, and in as ample manner as any Bishop of Durham in our Kingdom of England, ever heretofore have held, used or enjoyed, or of right ought or could have, use, or enjoy. And them, the said Edward Earl of Clarendon . . . [and others] . . . their heirs and assigns, We do by these Presents . . . constitute, the true and Absolute Lords Proprietors of the Country aforesaid, and of all other the premises; saving always the faith, allegiance and sovereign dominion due to us . . . for the same, and saving also the right, title, and interest of all and every our subjects of the English nation, which are now planted within the limits and bounds aforesaid (if any

be), . . . yielding and paying yearly to us . . . for the same, the yearly rent of twenty marks of lawful money of England . . . and also the fourth part of all gold or silver ore, which, within the limits aforesaid, shall from time to time happen to be found.

5th. And that the country, thus by us granted and described, may be dignified by us with as large Titles and Priviledges as any other part of our Dominions and territories in that region, Know ye, that we . . . do . . . erect, incorporate and ordain the same into a Province, and call it the Province of Carolina. [The proprietors may make laws with the assent of the freemen.]

6th. [The proprietors may make ordinances;] so as such Ordinances be reasonable, and not repugnant or contrary, but as near as may be, agreeable to the laws and statutes of this our Kingdom of England, and so as the same ordinances do not extend to the binding, charging, or taking away of the right or interest of any person or persons, in their freehold, goods or chattels whatsoever.

* * * * * * * *

9th. Provided nevertheless, . . . and we . . . by these presents . . . do give and grant unto the said Edward Earl of Clarendon . . . [and others] . . . . full and free license, liberty, and authority, at any time or times, from and after the feast of St. Michael the Arch-Angel . . . [1667] . . . as well to import, and bring into any of our Dominions from the said Province of Carolina, or any part thereof, the several goods and commodities, hereinafter mentioned, that is to say, silks, wines, currants, raisins, capers, wax, almonds, oyl, and olives, without paying or answering to us . . . any custom, import, or other duty, for and in respect thereof for and during the term and space of seven years, to commence and be accompted, from and after the first importation of four tons of any the said goods, in any one bottom, ship or vessel from the said Province, into any of our Dominions; as also to export and carry out of any of our Dominions, into the said Province of Carolina, custom free, all sorts of tools which shall be usefull or necessary for the planters there, in the accommodation and improvement of the premises, any thing before, in these presents contained, or any law, act, statute, prohibition, or other matter . . . to the contrary, in any wise notwithstanding.

* * * * * * * *

18th. And because it may happen that some of the people and inhabitants of the said Province, cannot in their private opinions, conform to the publick exercise of religion, according to the liturgy form and ceremonies of the Church of England, or take and subscribe the oath and articles, made and established in that behalf, and for that the same, by reason of the remote distances of these places, will, we hope, be no breach of the unity and uniformity established in this nation; . . . we do . . . grant unto the said Edward, Earl of Clarendon . . . [and others] . . . full and free license, liberty and authority, by such legal ways and means as they shall think fit, to give and grant unto such person or persons, inhabiting and being within the said Province, or any part thereof, who really in their judgments, and for conscience sake, cannot or shall not conform to the said liturgy and ceremonies, and take and subscribe the oaths and articles aforesaid, or any of them, such indulgencies and dispensations in that behalf, for and during such time and times, and with such limitations and restrictions as they . . . shall in their discretion think fit and reasonable; and with this express proviso, and limitation also, that such person and persons, to whom such indulgencies and dispensations shall be granted as aforesaid, do and shall, from time to time declare and continue, all fidelity, loyalty and obedience to us, our heirs and successors, and be subject and obedient to all other the laws, ordinances, and constitutions of the said Province, in all matters whatsoever, as well ecclesiastical as civil, and do not in any wise disturb the peace and safety thereof, or scandalize or reproach the said liturgy, forms, and ceremonies, or any thing relating thereunto, or any person or persons whatsoever, for or in respect of his or their use or exercise thereof, or his or their obedience and conformity, thereunto.

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No. 18. Charter of Rhode Island and Providence Plantations

July 8/18, 1663

In January, 1661, John Clarke, sometime agent for Rhode Island in England, presented a petition for a royal charter for that colony. The prompt

ness of Rhode Island in proclaiming Charles II., and the willingness of the king to restrain the ambitions of Massachusetts, caused the petition to be favorably regarded. The charter of Connecticut, however, in 1662, included within the limits of that colony certain territory on Narragansett Bay long in dispute between Massachusetts and Rhode Island, and now held by the Atherton Company, a land-speculating organization of which Winthrop was a member. An effort on the part of Rhode Island, in 1660, to come to terms with this company had been unsuccessful. Clarke entered a protest against the Connecticut grant; but, by agreement with Winthrop, the controversy was presently referred to arbitrators. The decision, in April, 1663, was favorable to Rhode Island, and in July the charter was issued. With the exception of the brief period of Andros's administration, 1686–1689, during which the government was carried on by the towns, the charter continued to be the fundamental law of Rhode Island until the adoption of a State constitution in 1842.

REFERENCES. — *Text* in *Rhode Island Colonial Records*, II., 3–21.

Charles the Second, [&c.] . . . : Whereas wee have been informed, by the humble petition of our trustie and well beloved subject, John Clarke, on the behalfe of Benjamine* Arnold, William Brenton, William Codington, Nicholas Easton, William Boulston, John Porter, John Smith, Samuell Groton, John Weeks, Roger Williams, Thomas Olnie, Gregorie Dexter, John Cogeshall, Joseph Clarke, Randall Holden, John Greene, John Roome, Samuell Wildbore, William Ffield, James Barker, Richard Tew, Thomas Harris, and William Dyre, and the rest of the purchasers and ffree inhabitants of our island, called Rhode-Island, and the rest of the colonie of Providence Plantations, in the Narragansett Bay, in New-England, in America, that they, pursueing, with peaceable and loyall mindes, their sober, serious and religious intentions, of godlie edifieing themselves, and one another, in the holie Christian ffaith and worshipp as they were perswaded: together with the gaineing over and conversione of the poore ignorant Indian natives, in those partes of America, to the sincere professione and obedienc of the same ffaith and worship, did, not onlie by the consent and good encouragement of our royall progenitors, transport themselves out of this kingdome of England into America, but alsoe, since their arrivall there, after their first settlement amongst other our subjects in those parts, ffor the avoideing of discorde, and those manie evills which were likely to ensue upon some of those oure subjects not beinge able to beare, in these remote partes, theire different apprehensiones

* Error in the original for "Be edict."

in religious concernments, and in pursueance of the aforesayd ends, did once againe leave theire desireable stationes and habitationes, and with excessive labor and travell, hazard and charge, did transplant themselves into the middest of the Indian natives, who, as wee are infformed, are the most potent princes and people of all that country; where, by the good Providence of God, from whome the Plantationes have taken their name, upon theire labour and industrie, they have not onlie byn preserved to admiration, but have increased and prospered, and are seized and possessed, by purchase and consent of the said natives, to their ffull content, of such lands, islands, rivers, harbours and roades, as are verie convenient, both for plantationes and alsoe for buildinge of shipps, suplye of pype-staves, and other merchandize; and which lyes verie commodious, in manie respects, for commerce, and to accommodate oure southern plantationes, and may much advance the trade of this oure realme, and greatlie enlarge the territories thereof; they haveinge, by neare neighbourhoode to and friendlie societie with the greate bodie of the Narragansett Indians, given them encouragement, of theire owne accorde, to subject themselves, theire people and landes, unto us; whereby, as is hoped, there may, in due tyme, by the blessing of God upon theire endeavours, bee layd a sure ffoundation of happinesse to all America: And whereas, in theire humble addresse, they have ffreely declared, that it is much on their hearts (if they may be permitted), to hold forth a livelie experiment, that a most flourishing civill state may stand and best bee maintained, and that among our English subjects, with a full libertie in religious concernements; and that true pietye rightly grounded upon gospell principles, will give the best and greatest security to sovereignetye, and will lay in the hearts of men the strongest obligations to true loyaltye: Now know yee, that wee beinge willinge to encourage the hopefull undertakeinge of oure sayd loyall and loveinge subjects, and to secure them in the free exercise and enjoyment of all theire civill and religious rights, appertaining to them, as our loveing subjects; and to preserve unto them that libertye, in the true Christian ffaith and worshipp of God, which they have sought with soe much travaill, and with peaceable myndes, and loyall subjectione to our royall progenitors and ourselves, to enjoye; and because some of the people and inhab-

itants of the same colonie cannot, in theire private opinions, conforme to the publique exercise of religion, according to the litturgy, formes and ceremonyes of the Church of England, or take or subscribe the oaths and articles made and established in that behalfe; and for that the same, by reason of the remote distances of those places, will (as wee hope) bee noe breach of the unitie and unifformitie established in this nation: . . . doe hereby . . . declare, That our royall will and pleasure is, that noe person within the sayd colonye, at any tyme hereafter, shall bee any wise molested, punished, disquieted, or called in question, for any differences in opinione in matters of religion, and doe not actually disturb the civill peace of our sayd colony; but that all and everye person and persons may, from tyme to tyme, and at all tymes hereafter, freelye and fullye have and enjoye his and theire owne judgments and consciences, in matters of religious concernments, throughout the tract of lande hereafter mentioned; they behaving themselves peaceablie and quietlie, and not useing this libertie to lycentiousnesse and profanenesse, nor to the civill injurye or outward disturbeance of others; any lawe, statute, or clause, therein contayned, or to bee contayned, usage or custome of this realme, to the contrary hereof, in any wise, notwithstanding. And that they may bee in the better capacity to defend themselves, in theire just rights and libertyes against all the enemies of the Christian ffaith, and others, in all respects, wee . . . further . . . declare, That they shall have and enjoye the benefitt of our late act of indempnity and ffree pardon, as the rest of our subjects in other our dominions and territoryes have; and to create and make them a bodye politique or corporate, with the powers and priviledges hereinafter mentioned. And accordingely . . . wee . . . doe ordeyne, constitute and declare, That they, the sayd William Brenton . . . [and others] . . . and all such others as now are, or hereafter shall bee admitted and made ffree of the company and societie of our collonie of Providence Plantations, in the Narragansett Bay, in New-England, shall bee, from tyme to tyme, and forever hereafter, a bodie corporate and politique, . . . by the name of The Governor and Company of the English Collonie of Rhode-Island and Providence Plantations, in New-England, in America. . . . And further, wee . . . doe declare . . that . . . there shall bee one Governour, one Deputie-

Governour and ten Assistants, to bee from tyme to tyme . . . chosen, out of the freemen of the sayd Company, for the tyme beinge, in such manner and fforme as is hereafter in these presents expressed; . . . And . . . wee doe . . . apoynt the aforesayd Benedict Arnold to bee the first and present Governor of the sayd Company, and the sayd William Brenton to bee the Deputy-Governor, and the sayd William Boulston, John Porter, Roger Williams, Thomas Olnie, John Smith, John Greene, John Cogeshall, James Barker, William Ffeild, and Joseph Clarke, to bee the tenn present Assistants of the sayd Companye. . . . And further, wee . . . doe ordeyne . . . that the Governor of the sayd Company, for the tyme being, or, in his absence, . . . the Deputy-Governor, . . . shall and may, ffrom tyme to tyme, upon all occasions, give order ffor the assemblinge of the sayd Company, and callinge them together, to consult and advise of the businesse and affaires of the sayd Company. And that forever hereafter, twice in every year, that is to say, on every first Wednesday in the moneth of May, and on every last Wednesday in October, or oftener, in case it shall bee requisite, the Assistants, and such of the ffreemen of the Company, not exceedinge six persons ffor Newport, ffoure persons ffor each of the respective townes of Providence, Portsmouth and Warwicke, and two persons for each other place, towne or city, whoe shall bee, from tyme to tyme, thereunto elected or deputed by the majour parte of the ffreemen of the respective townes or places ffor which they shall bee so elected or deputed, shall have a generall meetinge, or Assembly then and there to consult, advise and determine, in and about the affaires and businesse of the said Company and Plantations. And further, wee doe . . . graunt unto the sayd Governour and Company . . . that the Governour . . . [or Deputy-Governor] . . . , the Assistants, and such of the ffreemen of the sayd Company as shall bee soe as aforesayd elected or deputed, or soe many of them as shall bee present att such meetinge or assemblye, as afforesayde, shall bee called the Generall Assemblye; and that they, or the greatest parte of them present, whereof the Governour or Deputy-Governour, and sixe of the Assistants, at least to bee seven, shall have . . . ffull power [*and*] authority . . . to apoynt, alter and change, such dayes, tymes and places of meetinge and Generall Assemblye, as theye shall thinke ffitt; And further . . .

wee doe . . . ordeyne, that yearelie, . . . the aforesayd Wednesday in May, and at the towne of Newport, or elsewhere, if urgent occasion doe require, the Governour, Deputy-Governour and Assistants of the sayd Company, and other officers of the sayd Company, or such of them as the Generall Assemblye shall thinke ffitt, shall bee, in the sayd Generall Court or Assembly to bee held from that daye or tyme, newly chosen for the year ensueing, by such greater part of the sayd Company, for the tyme beinge, as shall bee then and there present; . . . Neverthelesse, our will and pleasure is, and wee doe hereby declare to the rest of oure Collonies in New-England, that itt shall not bee lawefull ffor this our sayd Collony . . . to invade the natives inhabiting within the boundes and limitts of theire sayd Collonies without the knowledge and consent of the sayd other Collonies. And itt is hereby declared, that itt shall not bee lawfull to or ffor the rest of the Collonies to invade or molest the native Indians, or any other inhabitants, inhabiting within the bounds and lymitts hereafter mentioned (they having subjected themselves unto us, and being by us taken into our speciall protection), without the knowledge and consent of the Governour and Company of our Collony of Rhode-Island and Providence Plantations. . . . And ffurther, know ye, that wee . . . doe give, graunt and confirme, unto the sayd Governour and Company, and theire successours, all that parte of our dominiones in New-England, in America, conteyneing the Nahantick and Nanhyganset Bay, and countryes and partes adjacent, bounded on the west, or westerly, to the middle or channel of a river there, commonly called and known by the name of Pawcatuck, alias Pawcawtuck river, and soe along the sayd river, as the greater or middle streame thereof reacheth or lyes vpp into the north countrye, northward, unto the head thereof, and from thence, by a streight lyne drawne due north, untill itt meets with the south lyne of the Massachusetts Collonie; and on the north, or northerly, by the aforesayd south or southerly lyne of the Massachusetts Collony or Plantation, and extending towards the east, or eastwardly, three English miles to the east and north-east of the most eastern and north-eastern parts of the aforesayd Narragansett Bay, as the sayd bay lyeth or extendeth itself from the ocean on the south, or southwardly, unto the mouth of the river which runneth towards the towne of Provi-

dence, and from thence along the eastwardly side or banke of the sayd river (higher called by the name of Seacunck river), up to the ffals called Patuckett ffalls, being the most westwardly lyne of Plymouth Collony, and soe from the sayd ffalls, in a streight lyne, due north, untill itt meete with the aforesayd lyne of the Massachusetts Collony; and bounded on the south by the ocean: and, in particular, the lands belonging to the townes of Providence, Pawtuxet, Warwicke, Misquammacok, alias Pawcatuck, and the rest upon the maine land in the tract aforesaid, together with Rhode-Island, Blocke-Island, and all the rest of the islands and banks in the Narragansett Bay, and bordering upon the coast of the tract aforesayd (Ffisher's Island only excepted), . . . any graunt, or clause in a late graunt, to the Governour and Company of Connecticutt Collony, in America, to the contrary thereof in any wise notwithstanding; . . . And further, our will and pleasure is, that in all matters of publique controversy which may fall out betweene our Collony of Providence Plantations, and the rest of our Collonies in New-England, itt shall and may bee lawfull to and for the Governour and Company of the sayd Collony of Providence Plantations to make their appeals therein to us . . ., for redresse in such cases, within this our realme of England: and that itt shall be lawfull to and for the inhabitants of the sayd Collony . . ., without let or molestation, to passe and repasse with freedome, into and through the rest of the English Collonies, upon their lawfull and civill occasions, and to converse, and hold commerce and trade, with such of the inhabitants of our other English Collonies as shall bee willing to admitt them thereunto, they behaveing themselves peaceably among them. . . .

No. 19. Second Navigation Act

1663

The Navigation Act of 1660 had assured to English vessels a monopoly of the carrying trade between the colonies and England; but English vessels might still trade, except in certain "enumerated articles," directly between colonial and foreign ports. The act of 1663 aimed to benefit the merchants as well as the shipowners, by securing to English merchants the control of the colonial import trade.

REFERENCES. — *Text* in *Statutes of the Realm*, V., 449–452. The act is cited as 15 Car. II., c. 7.

AN ACT for the Encouragement of Trade.

[IV.] AND in reguard His Majesties Plantations beyond the Seas are inhabited and peopled by His Subjects of this His Kingdome of England, For the maintaining a greater correspondence and kindnesse betweene them and keepeing them in a firmer dependence upon it, and rendring them yet more beneficiall and advantagious unto it in the farther Imployment and Encrease of English Shipping and Seamen, vent of English Woollen and other Manufactures and Commodities rendring the Navigation to and from the same more safe and cheape, and makeing this Kingdome a Staple not onely of the Commodities of those Plantations but alsoe of the Commodities of other Countryes and Places for the supplying of them, and it being the usage of other Nations to keepe their [Plantations [1]] Trade to themselves, Be it enacted . . . That from and after . . . [March 25, 1664,] . . . noe Commoditie of the Growth Production or Manufacture of Europe shall be imported into any Land Island Plantation Colony Territory or Place to His Majestie belonging, or which shall [belong hereafter [2]] unto, or be in the Possession of His Majestie . . . in Asia Africa or America (Tangier onely excepted) but what shall be bona fide and without fraude laden and shipped in England Wales [and [3]] the Towne of Berwicke upon Tweede and in English built Shipping, or which were bona fide bought before . . . [October 1, 1662,] . . . and had such Certificate thereof as is directed . . . [by the explanatory Navigation Act of 1662,] . . . and whereof the Master and three Fourthes of the Marriners at least are English, and which shall be carryed directly thence to the said Lands Islands Plantations Colonyes Territories or Places, and from noe other place or places whatsoever Any Law Statute or Usage to the contrary notwithstanding, under the Penaltie of the losse of all such Commodities of the Growth Production or Manufacture of Europe as shall be imported into any of them from any other Place whatsoever by Land or Water,

[1] *Plantation* in the original Ms.
[2] *Hereafter belong* in the original Ms.
[3] The original Ms. has *or*.

and if by Water, of the Ship, or Vessell alsoe in which they were imported with all her Guns Tackle Furniture Ammunition and Apparell. . . .

[V.] Provided alwayes . . . That it shall and may be lawfull to shipp and lade in such Shipps, and soe navigated as in the foregoeing Clause is sett downe and expressed in any part of Europe Salt for the Fisheries of New England and New found land, and to shipp and lade in the Medera's Wines of the Growth thereof, and to shipp and lade in the Westerne Islands or Azores Wines of the Growth of the said Islands, and to shipp [or [1]] take in Servants or Horses in Scotland or Ireland, and to shipp or lade in Scotland all sorts of Victuall of the Growth or Production of Scotland, and to shipp or lade in Ireland all sortes of Victuall of the Growth or Production of Ireland, and the same to transport into any of the said Lands Islands Plantations Colonyes Territories or Places, Any thing in the foregoing Clause in the contrary in any wise notwithstanding.

* * * * * * * *

[VII.] And it is hereby further enacted That if any Officer of the Customes in England Wales or Towne of Berwicke upon Tweede shall give any Warrant for or suffer any Sugar, Tobaccho, Ginger, Cotton, Wooll, Indico Speckle Wood or Jamaica Wood Fusticke or other Dying Wood of the growth of any of the said Lands Islands Colonyes Plantations Territories or Places to be carryed into any other Country or Place whatsoever untill they have beene first unladen bona fide and putt on shore in some Port or Haven in England or Wales or in the Towne of Berwicke, that every such Officer for such Offence shall forfeite his place and the value of such of the said Goods as he shall give Warrant for or suffer to passe into any other Country or Place. . . .

No. 20. Grant to the Duke of York

March 12/22, 1663/4

The province of New Netherland, granted to the Duke of York, brother of Charles II., in March, 1663/4, was not surrendered to the English until the

[1] *And* in the original Ms.

following August. By the treaty of Breda, in 1667, the English occupation was confirmed. On the renewal of the war between England and the United Netherlands, in March, 1672/73, New York was retaken by the Dutch, and a general act of confiscation was passed, including in its scope property of the King and of the Duke of York; but the treaty of Westminster, in 1674, providing for a mutual restoration of conquests, reëstablished the English control. To remove any doubt as to the validity of the grant of 1664, and other grants made under it, due to the temporary occupation by the Dutch, a second grant was made June 29/July 9, 1674, in terms only verbally different from the first.

REFERENCES. — *Text* in *Documents relating to the Colonial History of New York*, II., 295–298. On the English conquest, see Sainsbury's *Calendar of State Papers*, Colonial, V. The so-called "Duke of York's Laws," 1676–1682, have been reprinted by the State of Pennsylvania (Harrisburg, 1879), in a volume containing also the charter and early laws of Pennsylvania.

CHARLES the Second, . . . [&c.] . . . Know ye that we . . . Do Give and Grant unto our Dearest Brother James Duke of York his Heirs and Assigns All that part of the maine Land of New England beginning at a certain place called or known by the name of St Croix next adjoining to New Scotland in America and from thence extending along the Sea Coast unto a certain place called Petuaquine or Pemaquid and so up the River thereof to the furthest head of the same as it tendeth Northwards and extending from thence to the River Kinebequi and so Upwards by the Shortest course to the River Canada Northward And also all that Island or Islands commonly called by the several name or names of Matowacks or Long Island situate lying and being towards the West of Cape Cod and the Narrow Higansetts abutting upon the main land between the two Rivers there called or known by the several names of Connecticut and Hudsons River together also with the said River called Hudsons River and all the Land from the West side of Connecticut to the East side of Delaware Bay and also all those several Islands called or known by the Names of Martin's Vinyard and Nantukes otherwise Nantuckett. . . . And the said James Duke of York doth . . . covenant and promise to yield and render unto us . . . of and for the same yearly . . . forty Beaver skins when they shall be demanded or within Ninety days after And We do further . . . Grant unto . . . James Duke of York his Heirs, Deputies, Agents, Commissioners and Assigns by these presents full and

absolute power and authority to correct, punish, pardon, govern and rule all such the subjects of us . . . who may from time to time adventure themselves into any the parts or places aforesaid or that shall or do at any time hereafter inhabit within the same according to such Laws, Orders, Ordinances, Directions and Instruments as by our said Dearest Brother or his Assigns shall be established . . . So always as the said Statutes Ordinances and proceedings be not contrary to but as near as conveniently may be agreeable to the Laws, Statutes & Government of this Our Realm of England And saving and reserving to us . . . the receiving, hearing and determining of the Appeal and Appeals of all or any Person or Persons of in or belonging to the territories or Islands aforesaid in or touching any Judgment or Sentence to be there made or given And further that it shall . . . be lawful . . . for our said Dearest Brother his Heirs and Assigns by these presents from time to time to nominate, make, constitute, ordain and confirm by such name or names stile or stiles as to him or them shall seem good and likewise to revoke, discharge, change and alter as well all and singular Governors, Officers and Ministers which hereafter shall be by him or them thought fit and needful to be made or used within the aforesaid parts and Islands And also to make, ordain and establish all manner of Orders, Laws, directions, instructions, forms and Ceremonies of Government and Magistracy fit and necessary for and Concerning the Government of the territories and Islands aforesaid so always as the same be not contrary to the laws and statutes of this Our Realm of England but as near as may be agreeable thereunto. . . .

No. 21. Second Charter of Carolina

June 30/July 10, 1665

Although the Heath grant of 1629 had been declared void by an order in council, it had not been judicially annulled; and it was, apparently, to quiet the title to the province, as well as to enlarge the boundaries, that the second Carolina charter was obtained. With the exception of the definition of boundaries, given in the extract following, the provisions of the two charters are similar. The proprietary government under the charter continued, with

many vicissitudes, until 1719, when it was overthrown; but the proprietors maintained their ownership until 1729, when the title of seven-eighths of the colony was purchased by the Crown. The proprietor of the remaining one-eighth, Lord Carteret, exchanged his portion in 1743 for a narrow strip of land between 35° 34′ north latitude and the southern boundary of Virginia, which he retained until the Revolution. During most of the proprietary period the northern and southern colonies enjoyed separate governments, although the province was held as a unit; but with the purchase of the proprietary title by the Crown, in 1729, North and South Carolina became separate royal provinces, and so continued until the adoption of State constitutions in 1776.

References. — *Text* in *Statutes at Large of South Carolina* (Cooper's ed., 1836), I., 31–40.

CHARLES the Second, . . . [&c.] . . . WHEREAS, by our Letters Patents, bearing date . . . [March 24, 1663,] . . . We were graciously pleased to grant unto . . . Edward Earl of Clarendon, our High Chancellor of England . . . [and others] . . . all that province . . . called Carolina, situate, lying and being within our dominions of America; extending from the north end of the island called Luke-Island, which lieth in the Southern Virginia seas, and within thirty-six degrees of north latitude; and to the west, as far as the South-Seas; and so respectively as far as the river of Matthias, which bordereth upon the coast of Florida, and within thirty-one degrees of north latitude; and so west, in a direct line, as far as the South-Seas aforesaid.

2d. Now know ye, that we . . . are graciously pleased to enlarge our said grant unto them, according to the bounds and limits hereafter specified, . . . all that Province, territory, or tract of ground, scituate, lying and being within our dominions of America aforesaid, extending north and eastward as far as the north end of Charahake river or gulet, upon a streight westerly line to Wyonoake Creek, which lies within or about the degrees of thirty-six, and thirty minutes northern latitude, and so west in a direct line as far as the South-seas; and South and Westward as far as the degrees of twenty-nine inclusive northern latitude, and so west in a direct line, as far as the South Seas; together with all and singular ports, harbours, bays, rivers, and islets, belonging unto the Province or territory aforesaid. . . .

4th. And that the Province or territory hereby granted and described, may be dignified with as large Titles and Priviledges

as any other parts of our Dominions and territories in that region, Know ye, that we . . . do . . . annex and unite the same to the said Province of Carolina. . . .

* * * * * * * *

No. 22. Third Navigation Act

1672

THE immediate object of the act of 1672 was to prevent the illegal trade in tobacco between the American colonies and the continent of Europe. Tobacco was one of the articles which, by the Navigation Act of 1660, could be exported only to England or to another colony; but the increasing demand for this product, together with the high price which must be paid for such tobacco as had paid customs duty in England, served to encourage smuggling and illicit trade. The distinguishing feature of the act of 1672 is the requirement of a bond that the "enumerated articles" would be landed in England, and the imposition of specified duties in case of failure of the merchant to comply.

REFERENCES. — *Text* in *Statutes of the Realm*, V., 792, 793. The act is cited as 25 Car. II., c. 7. The regulation of the trade in tobacco was the subject of various acts; these are enumerated and discussed in the work of Beer, cited under No. 15, *ante*.

AN ACT for the incouragement of the Greeneland and Eastland Trades, and for the better secureing the Plantation Trade.

[V.] AND whereas by . . . [the Navigation Act of 1660] . . ., and by severall other Lawes passed since that time it is permitted to shipp, carry, convey and transport Sugar, Tobacco, Cotton-woell, Indicoe, Ginger, Fusticke and all other Dying wood of the Growth, Production and Manufacture of any of your Majestyes Plantations in America, Asia or Africa from the places of their Growth Production and Manufacture to any other of your Majestyes Plantations in those Parts (Tangier onely excepted) and that without paying of Custome for the same either at ladeing or unladeing of the said Commodityes by meanes whereof the Trade and Navigation in those Commodityes from one Plantation to another is greatly increased, and the Inhabitants of diverse of those Colonies not contenting themselves with being supplyed with those Commodities for their owne use free from all Customes (while the Subjects of this your Kingdome of England have paid

great Customes and Impositions for what of them hath beene spent here) but contrary to the expresse Letter of the aforesaid Lawes have brought into diverse parts of Europe great quantities thereof, and doe alsoe [dayly [1]] vend great quantities thereof to the shipping of other Nations who bring them into diverse parts of Europe to the great hurt and diminution of your Majestyes Customes and of the Trade and Navigation of this your Kingdome; For the prevention thereof . . . bee it enacted . . . That from and after . . . [September 1, 1673,] . . . If any Shipp or Vessell which by Law may trade in any of your Majesties Plantations shall come to any of them to shipp and take on board any of the aforesaid Commodities, and that Bond shall not be first given with one sufficient Surety to bring the same to England or Wales or the Towne of Berwicke upon Tweede and to noe other place, and there to unloade and putt the same on shoare (the danger of the Seas onely excepted) that there shall be . . . paid to your Majestie . . . for soe much of the said Commodities as shall be laded and putt on board such Shipp or Vessell these following Rates and Dutyes, That is to say

For Sugar White the hundred Weight containing one hundred and twelve pounds five shillings;

And Browne Sugar and Muscavadoes the hundred weight containing one hundred and twelve pounds one shilling [and [2]] six pence;

For Tobacco the pound one penny;

For Cotton-wooll the pound one halfe-penny;

For Indicoe the pound, two pence;

For Ginger the hundred Weight containing one hundred and twelve pounds one shilling;

For Logwood the hundred Weight containing one hundred and twelve pounds, five pounds,

For Fusticke and all other Dying-wood the hundred Weight containing one hundred and twelve pounds six pence;

And alsoe for every pound of Cacao-nutts one penny . . .

[1] Interlined in the Roll.
[2] &ᵈ in the original.

No. 23. Charter of Pennsylvania

March 4/14, 1680/81

William Penn inherited from his father, Admiral Penn, a claim against the King, Charles II., which eventually amounted to some £16,000. On account of this claim, which was not formally relinquished, and also with a view to founding a colony under Quaker rule, Penn petitioned, in June, 1680, for a grant of land in America. The petition indicated the extent of the desired grant; but experience had made the colonial authorities in England cautious, and Penn's application, though favored by the King and the Duke of York, was carefully considered. The representatives of the Duke and of Lord Baltimore were consulted, and took a prominent part in the negotiations; but in December the attorney-general reported that the proposed grant did not interfere with their territorial claims. The boundaries were approved Jan. 15/25, 1680/81, and March 4/14 the charter was issued. The original draft of the charter, drawn up by Penn on the model of the charter of Maryland, was revised by Chief Justice North, and important modifications introduced. A royal proclamation of April 2/12 announced the issuance of the charter, and commanded obedience to its provisions. Penn shortly issued a pamphlet setting forth the advantages of the region and the conditions of settlement. In August, 1682, he obtained from the Duke of York a quit-claim deed of the territory included in Pennsylvania, and two deeds of feofment, one of Newcastle, with the land within a twelve-mile circuit about it, and the other of the land between Newcastle and Cape Henlopen.

References. — *Text* in *Charter and Laws of Pennsylvania* (Harrisburg, 1879), 81–90. An abstract of Penn's proposals is in Hazard's *Annals of Pennsylvania*, 505–513; the deeds from the Duke of York are also in *ib.*, 586–593. For the early documentary history, see *Votes of Assembly*, I.; *Colonial Records*, I.; Hazard's *Pennsylvania Archives*, I. Shepherd's *History of Proprietary Government in Pennsylvania* (Columbia Univ. *Studies*, VI.) is of prime importance.

CHARLES THE SECOND [&c.] . . . Knowe yee . . . that wee, favouring the petition and good purpose of the said William Penn, and haveing regard to the memorie and meritts of his late father, in divers services, and perticulerly to his Conduct, courage and discretion under our dearest brother, James, Duke of yorke, in that signall Battell and victorie, fought and obteyned against the Dutch fleete, comanded by the Herr Van Obdam, . . . [in 1665,] . . . In consideration thereof . . . by this Our present Charter . . . Doe give and grant unto the said Wil-

liam Penn, his heires and assignes All that Tract or parte of land in America, with all the Islands therein conteyned, as the same is bounded on the East by Delaware River, from twelve miles distance, Northwarde of New Castle Towne unto the three and fortieth degree of Northerne Latitude if the said River doeth extend soe farre Northwards; But if the said River shall not extend soe farre Northward, then by the said River soe farr as it doth extend, and from the head of the said River the Easterne Bounds are to bee determined by a Meridian Line, to bee drawne from the head of the said River unto the said three and fortieth degree, The said lands to extend westwards, five degrees in longitude, to bee computed from the said Eastern Bounds, and the said lands to bee bounded on the North, by the beginning of the three and fortieth degree of Northern latitude, and on the South, by a Circle drawne at twelve miles, distance from New Castle Northwards, and Westwards unto the beginning of the fortieth degree of Northerne Latitude; and then by a streight Line westwards, to the Limitt of Longitude above menconed. Wee Doe also . . . grant unto the said William Penn . . . the free and undisturbed use, and continuance in and passage into and out of all and singuler Ports, harbours, Bayes, waters, Rivers, Isles and Inletts, belonging unto or leading to and from the Countrey, or Islands aforesaid; . . . and him the said William Penn, his heires and Assignes, Wee do, by this our Royall Charter . . . make, Create . . . the true and absolute Proprietaries of the Countrey aforesaid, and of all other, the premisses, saving alwayes to us . . . the faith and allegiance of the said William Penn . . . , and of all other, the proprietaries, Tenants and Inhabitants that are, or shall be within the Territories and Precincts aforesaid; and Saving also unto us . . . the Sovreignity of the aforesaid Countrey. . . . To bee holden of us . . . as of our Castle of Windsor, in our County of Berks, in free and comon socage by fealty only for all services, and not in Capite or by Knights service, Yeelding and paying therefore . . . two beaver Skins . . . in every yeare; and also the fifth parte of all Gold and Silver Oare, which shall from time to time happen to be found within the Limitts aforesaid, cleare of all Charges, and . . . wee doe hereby erect the aforesaid Countrey and Islands, into a Province and Seigniorie, and doe call itt Pensilvania . . . [The proprietor may make laws with the assent of the freemen

appoint magistrates and other officers, and punish all crimes and offences except treason and murder.] Provided, Nevertheles, that the said Lawes bee consonant to reason, and bee not repugnant or contrarie, but as neare as conveniently may bee agreeable to the Lawes, Statutes and rights of this our Kingdome of England, And Saveing and reserving to us, Our heirs and Successors, the receiving, heareing and determining of the Appeale and Appeales, of all or any person or persons, of, in or belonging to the Territories aforesaid, or touching any Judgement to bee there made or given . . . [In emergencies, the proprietor or his representatives may make ordinances without the consent of the freemen; the same to be agreeable to the laws of England] . . . And to the End the said William Penn, or heires, or other, the Planters, Owners or Inhabitants of the said Province, may not att any time hereafter, by misconstrucon of the powers aforesaid, through inadvertiencie or designe, depart from that faith and due allegiance which by the Lawes of this our Realme of England, they and all our subjects, in our Dominions and Territories, always owe unto us . . . by colour of any extent or largenesse of powers hereby given, or pretended to bee given, or by force or colour of any lawes hereafter to bee made in the said Province, by vertue of any such powers. Our further will and pleasure is, that a transcript or Duplicate of all lawes which shall bee soe as aforesaid, made and published within the said province, shall within five yeares after the makeing thereof, be transmitted and delivered to the privy Councell . . . ; And if any of the said Lawes within the space of six months, after that they shall be soe transmitted and delivered, bee declared by us . . . in our . . . privy Councell, inconsistent with the sovereignety or lawfull prerogative of us . . . or contrary to the faith and allegiance due by [*to*] the legall Government of this realme, from the said William Penn, or his heires, or of the Planters and Inhabitants of the said province; and that thereupon any of the said Lawes shall bee adjudged and declared to bee void . . . that then, and from thenceforth such Lawes concerning which such Judgement and declaracon shall be made, shall become voyd, otherwise the said lawes soe transmitted, shall remaine and stand in full force according to the true intent and meaneing thereof. . . . **We Will alsoe**, and by these presents . . . doe . . . grant licence . . . unto the said William

Penn . . . and to all the inhabitants and dwellers in pvince aforesaid . . . to import or unlade by themselves or theire Servants, ffactors or assignes, all merchandizes and goods whatsoever, that shall arise of the fruites and comodities of the said province, either by Land or Sea, into any of the ports . . . in our kingdome of England, and not into any other countrey whatsoever. And Wee give him full power to dispose of the said goods in the said ports, and if need bee, within one yeare next after the unladeing of the same, to Lade the said Merchandizes and goodes again into the same or other shipps, and to export the same into any other Countreys, either of our Dominions or fforreigne, according to Lawe: PROVIDED alwayes, that they pay such customes and imposicons, subsidies and duties for the same . . . as the rest of our subjects of our kingdome of England, for the time being shall be bound to pay, And doe observe the Acts of Navigation and other Lawes in that behalfe made. . . . **And Wee doe** further . . . ordaine . . . That he the said William penn . . . may from time to time forever, have and enjoy the Customes and Subsidies in the ports, harbours and other Creeks, and places aforesaid, within the pvince aforesaid, payable or due for merchandizes and wares, there to be Laded and unladed, the said Customes and Subsidies to be reasonably assessed, upon any occasion by themselves, and the people there as aforesaid, to be assembled to whom wee Give power, by these presents . . . to assesse and impose the same, Saveing unto us . . . such imposicons and customes as by Act of parliament are and shall be appointed . . . [The proprietor to appoint an agent, who shall reside in England.] . . . **And** further . . . **Wee** doe Covenant and grant to and with the said William Penn, and his heires and assignes, That Wee . . . shall att no time hereafter sett or make, or cause to be sett, any impossicon, custome or other taxacon, rate or contribucon whatsoever, in and upon the dwellers and inhabitants of the aforesaid pvince, for their Lands, tenements, goods or chattels, within the said province, or in and upon any goods or merchandize within the said pvince, or to be laden or unladen within the ports or harbours of the said pvince, unles the same be with the consent of the pprietary, or chiefe Governor and assembly, or by Act of parliament in England. . . . **And** . . . Wee doe hereby . . . charge and require that if any of the inhabitants of the said pvince

to the number of Twenty, shall att any time hereafter be desirous, and shall by any writeing or by any pson deputed for them, signify such their desire to the Bishop of London, that any preacher or preachers to be approved of by the said Bishop, may be sent unto them for their instruccon, that then such preacher or preachers, shall and may be and reside within the said pvince, without any deniall or molestacon whatsoever. . . .

No. 24. Second Charter of Massachusetts

October 7/17, 1691

In April, 1688, Increase Mather was sent to England to urge a restoration of the Massachusetts charter of 1629; and after the flight of James II. and the deposition of Andros, government under the charter was temporarily resumed. In January, 1688/9, Mather learned that "a circular letter was to be sent to all the plantations confirming the existing governments until further orders." He succeeded in stopping the dispatch of the letters intended for New England, and thus prevented the reinstatement of Andros, who was shortly made governor of Virginia. When it became clear that the old charter would not be restored, and that Massachusetts would remain a royal province, Mather and two other representatives of the colony petitioned for a new charter. The petition was favorably received, and the instrument was drafted in consultation with the agents.

References. — *Text* in *Acts and Resolves of the Province of Massachusetts Bay*, I., 1–20. On the vacating of the charter of 1629, see Toppan's *Edward Randolph* (Prince Soc. Publ.), I., II.; the exemplification is in *Mass. Hist. Coll.*, Fourth Series, II., 246–278.

[The charter begins by reciting the grant of a patent in 1620 to the Council for New England, the grant by the Council to the Massachusetts Bay Company in 1628, the royal charter of 1629, and the vacating of the charter by a judgment in chancery in 1684, and continues:]

And Whereas severall persons employed as Agents in behalfe of Our said Collony of the Massachusetts Bay in New England have made their humble application unto Us that Wee would be graciously pleased by Our Royall Charter to Incorporate Our Subjects in Our said Collony . . . And alsoe to the end Our good Subjects within Our Collony of New Plymouth in New England aforesaid may be brought under such a forme of Government as

may put them in a better Condition of defence . . . Wee doe by these presents for Us Our Heirs and Successors Will and Ordeyne that the Territories and Collonyes comonly called or known by the Names of the Collony of the Massachusetts Bay and Collony of New Plymouth the Province of Main the Territorie called Accadia or Nova Scotia and all that Tract of Land lying betweene the said Territori*ori*es of Nova Scotia and the said Province of Main be Erected United and Incorporated . . . into one reall Province by the Name of Our Province of the Massachusetts Bay in New England And . . . Wee doe . . . grant unto . . . the Inhabitants of . . . the Massachusetts Bay and their Successors all that parte of New England in America lying and extending from the greate River commonly called Monomack alias Merrimack on the Northpart and from three Miles Northward of the said River to the Atlantick or Western Sea or Ocean on the South part And all the Lands and Hereditaments whatsoever lying within the limitts aforesaid and extending as farr as the Outermost Points or Promontories of Land called Cape Cod and Cape Mallabar North and South and in Latitude Breadth and in Length and Longitude of and within all the Breadth and Compass aforesaid throughout the Main Land there from the said Atlantick or Western Sea and Ocean on the East parte towards the South Sea or Westward as far as Our Collonyes of Rhode Island Connecticutt and the Marragansett [*Narragansett*] Countrey all alsoe all that part or portion of Main Land beginning at the Entrance of Pescata way Harbour and soe to pass upp the same into the River of Newickewannock and through the same into the furthest head thereof and from thence Northwestward till One Hundred and Twenty Miles be finished and from Piscata way Harbour mouth aforesaid North-Eastward along the Sea Coast to Sagadehock and from the Period of One Hundred and Twenty Miles aforesaid to crosse over Land to the One Hundred and Twenty Miles before reckoned up into the Land from Piscataway Harbour through Newickawannock River and also the North halfe of the Isles and [*of*] Shoales together with the Isles of Cappawock and Nantukett near Cape Cod aforesaid and alsoe [all] Lands and Hereditaments lying and being in the Countrey and Territory commonly called Accadia or Nova Scotia And all those Lands and Hereditaments lying and extending betweene the said Countrey or Territory of Nova Scotia

and the said River of Sagadahock or any part thereof . . . and alsoe all Islands and Isletts lying within tenn Leagues directly opposite to the Main Land within the said bounds . . . And Wee doe further . . . ordeyne that . . . there shall be one Governour One Leiutenant or Deputy Governour and One Secretary of Our said Province or Territory to be from time to time appointed and Commissionated by Us . . . and Eight and Twenty Assistants or Councillors to be advising and assisting to the Governour . . . for the time being as by these presents is hereafter directed and appointed which said Councillors or Assistants are to be Constituted Elected and Chosen in such forme and manner as hereafter in these presents is expressed And for the better Execution of Our Royall Pleasure and Grant in this behalfe Wee . . . Nominate . . . Simon Broadstreet John Richards Nathaniel Saltenstall Wait Winthrop John Phillipps James Russell Samuell Sewall Samuel Appleton Barthilomew Gedney John Hawthorn Elisha Hutchinson Robert Pike Jonathan Curwin John Jolliffe Adam Winthrop Richard Middlecot John Foster Peter Serjeant Joseph Lynd Samuell Hayman Stephen Mason Thomas Hinckley William Bradford John Walley Barnabas Lothrop Job Alcott Samuell Daniell and Silvanus Davis Esquiers the first and present Councillors or Assistants of Our said Province . . . And Wee doe further . . . appoint . . . Isaac Addington Esquier to be Our first and present Secretary of Our said Province during Our Pleasure And Our Will and Pleasure is that the Governour . . . shall have Authority from time to time at his discretion to assemble and call together the Councillors or Assistants . . . and that the said Governour with the said Assistants or Councillors or Seaven of them at the least shall and may from time to time hold and keep a Councill for the ordering and directing the Affaires of Our said Province And further Wee Will . . . that there shall . . . be convened . . . by the Governour . . . upon every last Wednesday in the Moneth of May every yeare for ever and at all such other times as the Governour . . . shall think fitt and appoint a great and Generall Court of Assembly Which . . . shall consist of the Governour and Councill or Assistants . . . and of such Freeholders . . . as shall be from time to time elected or deputed by the Major parte of the Freeholders and other Inhabitants of the respective Townes or Places who shall be present at such Elections

Each of the said Townes and Places being hereby impowered to Elect and Depute Two Persons and noe more to serve for and represent them respectively in the said Great and Generall Court . . . To which Great and Generall Court . . . Wee doe hereby . . . grant full power and authority from time to time to direct . . . what Number each County Towne and Place shall Elect and Depute to serve for and represent them respectively . . . Provided alwayes that noe Freeholder or other Person shall have a Vote in the Election of Members . . . who at the time of such Election shall not have an estate of Freehold in Land within Our said Province or Territory to the value of Forty Shillings per Annum at the least or other estate to the value of Forty [1] pounds Sterling And that every Person who shall be soe elected shall before he sitt or Act in the said Great and Generall Court . . . take the Oaths mentioned in an Act of Parliament made in the first yeare of Our Reigne Entituled an Act for abrogateing of the Oaths of Allegiance and Supremacy and appointing other Oaths and thereby appointed to be taken instead of the Oaths of Allegiance and Supremacy and shall make Repeat and Subscribe the Declaration mentioned in the said Act . . . and that the Governour for the time being shall have full power and Authority from time to time as he shall Judge necessary to adjourne Prorogue and dissolve all Great and Generall Courts . . . met and convened as aforesaid And . . . Wee doe . . . Ordeyne that yearly once in every yeare . . . the aforesaid Number of Eight and Twenty Councillors or Assistants shall be by the Generall Court . . . newly chosen that is to say Eighteen at least of the Inhabitants of or Proprietors of Lands within the Territory formerly called the Collony of the Massachusetts Bay and four at the least of the Inhabitants of or Proprietors of Lands within the Territory formerly called New Plymouth and three at the least of the Inhabitants of or Proprietors of Land within the Territory formerly called the Province of Main and one at the least of the Inhabitants of or Proprietors of Land within the Territory lying between the River of Sagadahoc and Nova Scotia . . . [The General Court may remove assistants from office, and may also fill vacancies caused by removal or death.] And Wee doe further . . . Ordeyne that it shall and may be

[1] See note in *Acts and Resolves*, vol. I., p. 393. — Ed.

lawfull for the said Governour with the advice and consent of the Councill or Assistants from time to time to nominate and appoint Judges Commissioners of Oyer and Terminer Sheriffs Provosts Marshalls Justices of the Peace and other Officers to Our Councill and Courts of Justice belonging . . . and for the greater Ease and Encouragement of Our Loveing Subjects Inhabiting our said Province . . . and of such as shall come to Inhabit there We doe . . . Ordaine that for ever hereafter there shall be a liberty of Conscience allowed in the Worshipp of God to all Christians (Except Papists) Inhabiting . . . within our said Province . . . [Courts for the trial of both civil and criminal cases may be established by the General Court, reserving to the governor and assistants matters of probate and administration.] And whereas Wee judge it necessary that all our Subjects should have liberty to Appeale to us . . . in Cases that may deserve the same Wee doe . . . Ordaine that incase either party shall not rest satisfied with the Judgement or Sentence of any Judicatories or Courts within our said Province . . . in any Personall Action wherein the matter in difference doth exceed the value of three hundred Pounds Sterling that then he or they may appeale to us . . . in our . . . Privy Councill . . . And we doe further . . . grant to the said Governor and the great and Generall Court . . . full power and Authority from time to time to make . . . all manner of wholesome and reasonable Orders Laws Statutes and Ordinances Directions and Instructions either with penalties or without (soe as the same be not repugnant or contrary to the Lawes of this our Realme of England) as they shall Judge to be for the good and welfare of our said Province. . . . And for the Government and Ordering thereof and of the People Inhabiting . . . the same and for the necessary support and Defence of the Government thereof [and also] full power and Authority to name and settle Annually all Civill Officers within the said Province such Officers Excepted the Election and Constitution of whome wee have by these presents reserved to us . . . or to the Governor . . . and to Settforth the severall Duties Powers and Lymitts of every such Officer . . . and the forms of such Oathes not repugnant to the Lawes and Statutes of this our Realme of England as shall be respectively Administred unto them for the Execution of their severall Offices and places And

alsoe to impose Fines mulcts Imprisonments and other Punishments And to Impose and leavy proportionable and reasonable Assessments Rates and Taxes upon the Estates and Persons of all and every the Proprietors and Inhabitants of our said Province or Territory . . . for Our Service in the necessary defence and support of our Government of our said Province . . . and the Protection and Preservation of the Inhabitants there according to such Acts as are or shall be in force within our said Province . . . [The governor to have a veto on elections and acts of the General Court] . . . And wee doe . . . Ordaine that the said Orders Laws Statutes and Ordinances be by the first opportunity after the makeing thereof sent or Transmitted unto us . . . for Our . . . approbation or Disallowance And that incase all or any of them shall at any time within the space of three yeares next after the same shall have been presented to us . . . in Our . . . Privy Councill be disallowed and rejected . . . then such . . . of them as shall be soe disallowed . . . shall thenceforth cease and determine and become utterly void and of none effect [Laws, &c., not disallowed within the three years, to remain in force until repealed by the General Court. Grants of land by the General Court, within the limits of the former colonies of Massachusetts Bay and New Plymouth, and the Province of Maine, excepting the region north and east of the Sagadahoc, to be valid without further royal approval. The governor shall direct the defense of the province, and may exercise martial law in case of necessity;] . . . Provided alwayes . . . That the said Governour shall not at any time hereafter by vertue of any power hereby granted or hereafter to be granted to him Transport any of the Inhabitants of Our said Province . . . or oblige them to march out of the Limitts of the same without their Free and voluntary consent or the Consent of the Great and Generall Court . . . nor grant Commissions for exercising the Law Martiall upon any the Inhabitants of Our said Province . . . without the Advice and Consent of the Councill or Assistants of the same . . . Provided alwaies . . . that nothing herein shall extend or be taken to . . . allow the Exercise of any Admirall Court Jurisdiction Power or Authority but that the same be and is hereby reserved to Us . . . and shall from time to time be . . . exercised by vertue of Commissions to be yssued under the Great Seale of

England or under the Seale of the High Admirall or the Commissioners for executing the Office of High Admirall of England. . . . And lastly for the better provideing and furnishing of Masts for Our Royall Navy Wee doe hereby reserve to Us . . . all Trees of the Diameter of Twenty Four Inches and upwards of Twelve Inches from the ground growing upon any soyle or Tract of Land within Our said Province . . . not heretofore granted to any private persons And Wee doe restraine and forbid all persons whatsoever from felling cutting or destroying any such Trees without the Royall Lycence of Us . . . first had and obteyned upon penalty of Forfeiting One Hundred Pounds sterling unto Ous [Us] . . . for every such Tree so felled cutt or destroyed. . . .

No. 25. Navigation Act

April 10/20, 1696

The Navigation Act of 1672, besides laying duties on certain "enumerated articles," had aimed to provide a more effective system of administration for the colonial customs service; but in the years immediately following the revolution of 1688, the acts of trade, never much regarded in the colonies, were extensively violated. In particular, the lack of a system of registry for English-built ships made the enforcement of the acts difficult, and led to complaints from British merchants of loss of revenue; and it was to supply this lack that the act of 1696 was especially designed. "All further shipping laws were in the nature of detailed regulations, and this act . . . may be said to have added the finishing touch to the colonial system so far as shipping was concerned" (*Channing*).

References. — *Text* in *Statutes of the Realm*, VII., 103–107. The act is cited as 7 and 8 Wm. III., c. 22.

An Act for preventing Frauds and regulating Abuses in the Plantation Trade.

[Recital that notwithstanding 12 Car. II., c. 18, 15 Car. II., c. 7, 22 & 23 Car. II., c. 26, and 25 Car. II., c. 7, great abuses are committed:] For Remedy thereof for the future bee itt enacted . . . That after . . . [March 25, 1698,] . . . noe Goods or Merchandizes whatsoever shall bee imported into or exported out of any Colony or Plantation to His Majesty in Asia Africa or

America belonging or in his Possession or which may hereafter belong unto or bee in the Possession of His Majesty . . . or shall bee laden in or carried from any One Port or Place in the said Colonies or Plantations to any other Port or Place in the same, the Kingdome of England Dominion of Wales or Towne of Berwick upon Tweed in any Shipp or Bottome but what is or shall bee of the Built of England or of the Built of Ireland or the said Colonies or Plantations and wholly owned by the People thereof or any of them and navigated with the Masters and Three Fourths of the Mariners of the said Places onely (except such Shipps onely as are or shall bee taken Prize . . . And alsoe except for the space of Three Yeares such Foreigne built Shipps as shall bee employed by the Commissioners of His Majesties Navy for the tyme being or upon Contract with them in bringing onely Masts Timber and other Navall Stores for the Kings Service from His Majesties Colonies or Plantations to this Kingdome to bee navigated as aforesaid and whereof the Property doth belong to English Men) under paine of Forfeiture of Shipp and Goods. . . .

* * * * * * * *

V. And for the more effectuall preventing of Frauds and regulating Abuses in the Plantation Trade in America Bee itt further enacted . . . That all Shipps comeing into or goeing out of any of the said Plantations and ladeing or unladeing any Goods or Commodities whether the same bee His Majesties Shipps of Warr or Merchants Shipps and the Masters and Commanders thereof and their Ladings shall bee subject and lyable to the same Rules Visitations Searches Penalties and Forfeitures as to the entring lading or dischargeing theire respective Shipps and Ladings as Shipps and their Ladings and the Commanders and Masters of Shipps are subject and lyable unto in this Kingdome . . . [by virtue of the act 14 Chas. II., ch. 11]. . . . And that the Officers for collecting and manageing His Majesties Revenue and inspecting the Plantation Trade in any of the said Plantations shall have the same Powers and Authorities for visiting and searching of Shipps and takeing their Entries and for seizing and securing or bringing on Shoare any of the Goods prohibited to bee imported or exported into or out of any the said Plantations or for which any Duties are payable or ought to have beene paid by any of the

before mentioned Acts as are provided for the Officers of the Customes in England by the said last mentioned Act . . . [of 14 Chas. II., ch. 11,] . . . and alsoe to enter Houses or Warehouses to search for and seize any such Goods. . . .

* * * * * * * *

XV. [(And [1]) bee itt further enacted . . . That all Persons and theire Assignees claymeing any Right or (Property [2]) in any Islands or Tracts of Land upon the Continent of America by Charter or Letters Patents shall not att any tyme hereafter alien sell or dispose of any of the said Islands Tracts of Land or Proprieties other than to the Naturall Borne Subjects of England Ireland Dominion of Wales or Towne of Berwick upon Tweed without the License and Consent of His Majesty . . . signifyed by His or Their Order in Councill first had and obteyned. . . .]

XVI. [And for a more effectuall prevention of Frauds which may bee used to elude the Intention of this Act by colouring Foreigne Shipps under English Names Bee itt further enacted . . . That from and after . . . [March 25, 1698,] . . . noe Shipp or Vessell whatsoever shall bee deemed or passe as a Shipp of the Built of England Ireland Wales Berwick Guernsey Jersey or of any of His Majesties Plantations in America soe as to bee qualifyed to trade to from or in any of the said Plantations untill the Person or Persons claymeing Property in such Shipp or Vessell shall register the same as followeth (that is to say) If the Shipp att the tyme of such Register doth belong to any Port in England Ireland Wales or to the Towne of Berwick upon Tweed then Proofe shall bee made upon Oath of One or more of the Owners of such Shipp or Vessell before the Collector and Comptroller of His Majesties Customes in such Port or if att the tyme of such Register the Shipp belong to any of His Majesties Plantations in America or to the Islands of Guernsey or Jersey then the like Proofe to bee made before the Governour together with the Principall Officer of His Majesties Revenue resideing on such Plantation or Island . . .] [3] . . .

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[1] Omitted in the Ms. [2] The Ms. has *Propriety*.
[3] The passage in brackets is annexed to the original act in a separate schedule.

No. 26. Treaty of Utrecht

March 31/April 11, 1713

By the second partition treaty between William III. and Louis XIV., in 1700, it had been agreed that the Spanish succession, on the death of Charles II., should go to the Archduke Charles, son of the Emperor Leopold. But Charles II. by will bequeathed all his possessions to Philip, Duke of Anjou, grandson of Louis, though with the proviso that the crowns of France and Spain should never be united; and, on the death of Charles, Louis claimed the inheritance for Philip. The seizure of the barrier fortresses, early in 1701, was soon followed by war in Italy between Leopold and the combined French and Spanish forces. William placed Marlborough in command of the English forces in the Netherlands, and in September formed, with Austria and the Dutch Republic, the so-called Grand Alliance. The death of William, in March, 1702, did not interrupt the war, and the Grand Alliance was shortly joined by most of the German princes. The European phases of the war of the Spanish Succession, and the careers of Marlborough and Prince Eugene of Savoy, do not call for discussion here. In America, where the war is known as Queen Anne's war, the most important movements were in connection with the repeated attempts to conquer some part of the French possessions. After two unsuccessful expeditions, in 1704 and 1707, against Acadia, Port Royal finally surrendered, in 1710, to the English; but a combined land and naval demonstration against Canada came to nothing. In September, 1711, preliminary articles of peace were signed; the conferences of the commissioners began in January, 1712, at Utrecht; and March 31/April 11, 1713, the treaty was concluded. Only the principal articles relating to America are given here.

References. — *Text* in Chalmers's *Collection of Treaties*, I., 340–386. Mahon's *History of England* [*during the*] *Reign of Anne* covers the period of the war; see also Lecky's *England in the Eighteenth Century* (Amer. ed.), I., 26–54, 106–158; Parkman's *Half Century of Conflict*.

X. The said most Christian King shall restore to the kingdom and Queen of Great Britain, to be possessed in full right for ever, the bay and streights of Hudson, together with all lands, seas, sea-coasts, rivers, and places situate in the said bay and streights, and which belong thereunto, no tracts of land or of sea being excepted, which are at present possessed by the subjects of France. . . . But it is agreed on both sides, to determine within a year, by commissaries to be forthwith named by each party, the limits which are to be fixed between the said Bay of Hudson and the places appertaining to the French. . . . The

same commissaries shall also have orders to describe and settle, in like manner, the boundaries between the other British and French colonies in those parts.

XI. The abovementioned most Christian King shall take care that satisfaction be given, according to the rule of justice and equity, to the English company trading to the Bay of Hudson, for all damages and spoil done to their colonies, ships, persons, and goods, by the hostile incursions and depredations of the French, in time of peace . . .

XII. The most Christian King shall take care to have delivered to the Queen of Great Britain, on the same day that the ratifications of this treaty shall be exchanged, solemn and authentic letters, or instruments, by virtue whereof it shall appear, that the island of St. Christopher's is to be possessed alone hereafter by British subjects, likewise all Nova Scotia or Acadie, with its ancient boundaries, as also the city of Port Royal, now called Annapolis Royal, and all other things in those parts, which depend on the said lands and islands . . . ; and that in such ample manner and form, that the subjects of the most Christian King shall hereafter be excluded from all kind of fishing in the said seas, bays, and other places, on the coasts of Nova Scotia, that is to say, on those which lie towards the east, within 30 leagues, beginning from the island commonly called Sable, inclusively, and thence stretching along towards the south-west.

XIII. The island called Newfoundland, with the adjacent islands, shall from this time forward belong of right wholly to Britain; and to that end the town and fortress of Placentia, and whatever other places in the said island are in the possession of the French, shall be yielded and given up, within seven months from the exchange of the ratifications of this treaty, or sooner, if possible, by the most Christian King, to those who have a commission from the Queen of Great Britain for that purpose. . . . Moreover, it shall not be lawful for the subjects of France to fortify any place in the said island of Newfoundland, or to erect any buildings there, besides stages made of boards, and huts necessary and usual for drying of fish; or to resort to the said island, beyond the time necessary for fishing, and drying of fish. But it shall be allowed to the subjects of France to catch fish, and to dry them on land, in that part only, and in no other

besides that, of the said island of Newfoundland, which stretches from the place called Cape Bonavista to the northern point of the said island, and from thence running down by the western side, reaches as far as the place called Point Riche. But the island called Cape Breton, as also all others, both in the mouth of the river of St. Lawrence, and in the gulph of the same name, shall hereafter belong of right to the French, and the most Christian King shall have all manner of liberty to fortify any place or places there.

XIV. It is expressly provided, that in all the said places and colonies to be yielded and restored by the most Christian King, in pursuance of this treaty, the subjects of the said King may have liberty to remove themselves, within a year, to any other place, as they shall think fit, together with all their moveable effects. But those who are willing to remain there, and to be subject to the Kingdom of Great Britain, are to enjoy the free exercise of their religion, according to the usage of the church of Rome, as far as the laws of Great Britain do allow the same.

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No. 27. Charter of Georgia

June 9/20, 1732

THE plan for a colony in Georgia originated with James Edward Oglethorpe, an English gentleman of good family, who had served with distinction under Prince Eugene of Savoy, and later had entered the House of Commons. Oglethorpe's sympathies having been enlisted on behalf of imprisoned debtors and discharged prisoners, he conceived the idea of establishing in America a colony where worthy persons of those classes could get a new start in life. The charter granted to trustees certain territory south of the Savannah river which had originally formed part of South Carolina, but had been retained by the Crown when the Carolinas were surrendered by the proprietors in 1729. To this was added the one-eighth interest retained by Carteret at the time of the surrender, and which he now conveyed to the trustees. The charter was surrendered in 1752, and Georgia became a royal province.

REFERENCES. — *Text* in Poore's *Federal and State Constitutions*, I., 369–377. The *Journal* of the trustees has been privately printed (1886). The *Colonial Records of Georgia*, I., cover the charter period. Various contemporary accounts are reprinted in the *Collections* of the Georgia Hist. Society,

and in Force's *Tracts*, I. See also early documents in Charles Lee's *Report on Claims to Lands in the Southwestern Parts of the United States*, in Amer. State Papers, *Public Lands*, I., 34–67.

GEORGE the second, [&c] . . .

Whereas we are credibly informed, that many of our poor subjects are, through misfortunes and want of employment, reduced to great necessity, insomuch as by their labor they are not able to provide a maintenance for themselves and families; and if they had means to defray their charges of passage, and other expences, incident to new settlements, they would be glad to settle in any of our provinces in America where by cultivating the lands, at present waste and desolate, they might not only gain a comfortable subsistence for themselves and families, but also strengthen our colonies and increase the trade, navigation and wealth of these our realms. And whereas our provinces in North America, have been frequently ravaged by Indian enemies; more especially that of South-Carolina, which in the late war, by the neighboring savages, was laid waste by fire and sword, and great numbers of English inhabitants, miserably massacred, and our loving subjects who now inhabit them, by reason of the smallness of their numbers, will in case of a new war, be exposed to the late [*like*?] calamities; inasmuch as their whole southern frontier continueth unsettled, and lieth open to the said savages — . . . Know ye therefore, that we . . . by these presents . . . do . . . ordain . . . that our right trusty and well beloved John, lord-viscount Purcival, of our kingdom of Ireland, our trusty and well beloved Edward Digby, George Carpenter, James Oglethorpe, George Heathcote, Thomas Tower, Robert Moore, Robert Hucks, Roger Holland, William Sloper, Francis Eyles, John Laroche, James Vernon, William Beletha, esquires, A. M. John Burton, B. D. Richard Bundy, A. M. Arthur Bedford, A. M. Samuel Smith, A. M. Adam Anderson and Thomas Corane, gentleman; and such other persons as shall be elected in the manner herein after mentioned, and their successors to be elected in the manner herein after directed; be, and shall be one body politic and corporate, in deed and in name, by the name of the Trustees for establishing the colony of Georgia in America; . . . and that they and their successors by that name shall and

may forever hereafter, be persons able and capable in the law, to purchase, have, take, receive and enjoy, to them and their successors, any manors, messuages, lands, tenements, rents, advowsons, liberties, privileges, jurisdictions, franchises, and other hereditaments whatsoever, lying and being in Great Britain, or any part thereof, of whatsoever nature, kind or quality, or value they be, in fee and in perpetuity, not exceeding the yearly value of one thousand pounds, beyond reprises; also estates for lives, and for years, and all other manner of goods, chattels and things whatsoever they be; for the better settling and supporting, and maintaining the said colony, and other uses aforesaid; and to give, grant, let and demise the said manors, messuages, lands, tenements, hereditaments, goods, chattels and things whatsoever aforesaid, by lease or leases, for term of years, in possession at the time of granting thereof, and not in reversion, not exceeding the term of thirty-one years, from the time of granting thereof; . . . and that they . . . by the name aforesaid, shall and may forever hereafter, be persons able, capable in the law, to purchase, have, take, receive, and enjoy, to them and their successors, any lands, territories, possessions, tenements, jurisdictions, franchises and hereditaments whatsoever, lying and being in America, of what quantity, quality or value whatsoever they be, for the better settling and supporting and maintaining the said colony; . . . And our will and pleasure is, that the first president of the said corporation . . . shall be . . . the said Lord John Viscount Percival; and that the said president shall, within thirty days after the passing this charter, cause a summons to be issued to the several members of the said corporation herein particularly named, to meet at such time and place as he shall appoint, to consult about and transact the business of said corporation. And . . . we . . . direct, that the common council of this corporation shall consist of fifteen in number; and we do . . . appoint . . . John Lord Viscount Percival, . . . Edward Digby, George Carpenter, James Oglethorpe, George Heathcote, Thomas Laroche, James Vernon, William Beletha, esqrs., and Stephen Hales, Master of Arts, to be the common council of the said corporation, to continue in the said office during their good behavior. And whereas it is our royal intention, that the members of the said corporation should be increased by election, as

soon as conveniently may be, to a greater number than is hereby nominated; . . . we do hereby . . . direct, that from the time of such increase of the members of the said corporation, the number of the common council shall be increased to twenty-four; and that the same assembly at which such additional members of the said corporation shall be chosen, there shall likewise be elected in the manner hereinbefore directed for the election of common council men, nine persons to be the said common council men, and to make up the number twenty-four. And our further will and pleasure is, that . . . Edward Digby, esquire, shall be the first chairman of the common council of the said corporation; and that the said lord-viscount Purcival shall be, and continue, president of the said corporation, and that the said Edward Digby shall be and continue chairman of the common council of the said corporation, respectively, until the meeting which shall be had next and immediately after the first meeting of the said corporation, or of the common council of the said corporation respectively, and no longer; . . . And we do hereby . . . direct, that the said corporation every year lay an account in writing before the chancellor, or speaker, or commissioners, for the custody of the great seal of Great-Britain . . . ; the Chief Justice of the Court of Kings' Bench, the Master of Rolls the Chief Justice of the Court of Common Pleas, and the chief Baron of the Exchequer . . . , or any two of them; of all moneys and effects by them received or expended, for carrying on the good purposes aforesaid. And we do hereby . . . give and grant unto the said corporation, and their successors, full power and authority to constitute, ordain and make, such and so many by-laws, constitutions, orders and ordinances, as to them . . . at their general meeting for that purpose, shall seem necessary and convenient for the well ordaining and governing of the said corporation; . . . and in and by such by-laws, rules, orders and ordinances, to sell, impose and inflict, reasonable pains and penalties upon any offender or offenders, who shall trangress, break or violate the said by-laws, constitutions, orders and ordinances; . . . so always, as the said by-laws, constitutions, orders, and ordinances, pains and penalties . . . , be reasonable and not contrary or repugnant to the laws or statutes of this our realm; and that such by-laws, constitutions and ordinances, pains and penal-

ties . . ., and any repeal or alteration thereof, or any of them, may be likewise agreed to be established and confirmed by the said general meeting of the said corporation, to be held and kept next after the same shall be respectively made. And whereas the said corporation intend to settle a colony, and to make an habitation and plantation in that part of our province of South-Carolina, in America, herein after described — Know ye, that we . . . do give and grant to the said corporation and their successors under the reservation, limitation and declaration, hereafter expressed, seven undivided parts, the whole in eight equal parts to be divided, of all those lands, countrys and territories, situate, lying and being in that part of South-Carolina, in America, which lies from the most northern part of a stream or river there, commonly called the Savannah, all along the sea coast to the southward, unto the most southern stream of a certain other great water or river called the Alatamaha, and westterly from the heads of the said rivers respectively, in direct lines to the south seas; and all that share, circuit and precinct of land, within the said boundaries, with the islands on the sea, lying opposite to the eastern coast of the said lands, within twenty leagues of the same, which are not inhabited already, or settled by any authority derived from the crown of Great-Britain: . . . to be holden of us, our heirs and successors as of our honour of Hampton-court, in our county of Middlesex in free and common soccage, and not in capite, yielding, and paying therefor to us . . . yearly forever, the sum of four shillings for every hundred acres of the said lands, which the said corporation shall grant, demise, plant or settle; the said payment not to commence or to be made, until ten years after such grant, demise, planting or settling; and to be answered and paid . . . in such manner and in such species of money or notes, as shall be current in payment, by proclamation from time to time, in our said province of South-Carolina. All which lands, countries, territories and premises . . . we do by these presents, make, erect and create one independent and separate province, by the name of Georgia. . . . And that all and every person or persons, who shall at any time hereafter inhabit or reside within our said province, shall be, and are hereby declared to be free, and shall not be subject to or be bound to obey any laws, orders, statutes or constitutions, which have been heretofore made.

ordered or enacted by, for, or as, the laws, orders, statutes or constitutions of our said province of South-Carolina, (save and except only the [*commander*] in chief of the militia, of our said province of Georgia, to our governor for the time being of South-Carolina, in manner hereafter declared;) but shall be subject to, and bound to obey, such laws, orders, statutes and constitutions as shall from time to time be made, ordered and enacted, for the better government of the said province of Georgia, in the manner hereinafter declared. And we do hereby . . . ordain . . . that for and during the term of twenty-one years, to commence from the date of these our letters patent, the said corporation assembled for that purpose, shall and may form and prepare, laws, statutes and ordinances, fit and necessary for and concerning the government of the said colony, and not repugnant to the laws and statutes of England; and the same shall and may present under their common seal to us . . ., in our or their privy council for our or their approbation or disallowance: and the said laws, statutes and ordinances, being approved of by us . . ., in our or their privy council, shall from thence forth be in full force and virtue within our said province of Georgia. . . . And for the greater ease and encouragement of our loving subjects and such others as shall come to inhabit in our said colony, we do . . . ordain, that forever hereafter, there shall be a liberty of conscience allowed in the worship of God, to all persons inhabiting, or which shall inhabit or be resident within our said province, and that all such persons, except papists, shall have a free exercise of religion, so they be contented with the quiet and peaceable enjoyment of the same, not giving offence or scandal to the government. And our further will and pleasure is, and we do hereby . . . declare and grant, that it shall and may be lawful for the said common council . . . to distribute, convey, assign and set over such particular portions of lands, tenements and hereditaments by these presents granted to the said corporation, unto such our loving subjects, natural born, denizens or others that shall be willing to become our subjects, and live under our allegiance in the said colony, upon such terms, and for such estates, and upon such rents, reservations and conditions as the same may be lawfully granted, and as to the said common council . . . shall seem fit and proper. . . . Provided . . . that no greater quantity of lands be granted, either en-

tirely or in parcels, to or for the use, or in trust for any one person, than five hundred acres. . . . And we do hereby grant and ordain, that such person or persons, for the time being as shall be thereunto appointed by the said corporation, shall . . . have full power and authority to administer and give the oaths, appointed by an act of parliament, made in the first year of the reign of our late royal father, to be taken instead of the oaths of allegiance and supremacy; and also the oath of abjuration, to all and every person and persons which shall at any time be inhabiting or residing with our said colony; and in like cases to administer the solemn affirmation to any of the persons commonly called quakers, in such manner as by the laws of our realm of Great-Britain, the same may be administered. And we do . . . ordain . . . that the said corporation and their successors, shall have full power and authority, for and during the term of twenty-one years . . ., to erect and constitute judicatories and courts of record, or other courts, to be held in the name of us . . . for the hearing and determining of all manner of crimes, offences, pleas, processes, plaints, actions, matters, causes and things whatsoever, arising or happening, within the said province of Georgia, or between persons of Georgia; whether the same be criminal or civil, and whether the said crimes be capital or not capital, and whether the said pleas be real, personal or mixed: and for awarding and making out executions thereupon . . . And our further will and pleasure is, that the rents, issues and all other profits, which shall at any time hereafter come to the said corporation, [*shall be applied in such manner as the said corporation*,[1]] or the major part of them which shall be present at any meeting for that purpose assembled, shall think will most improve and enlarge the said colony, and best answer the good purposes herein before mentioned, and for defraying all other charges about the same. And our will and pleasure is, that the said corporation and their successors, shall from time to time give in to one of the principal secretaries of state, and to the commissioners of trade and plantations, accounts of the progresses of the said colony. . . . And our will and pleasure is, that the common council of the said corporation for the time being . . . shall . . . unto the

[1] These words are not in the original, but appear to be necessary to complete the sense.

full end and expiration of twenty-one years . . . , have full power and authority to nominate, make, constitute and commission, ordain and appoint, by such name or names, style or styles, as to them shall seem meet and fitting, all and singular such governors, judges, magistrates, ministers and officers, civil and military, both by sea and land, within the said districts, as shall by them be thought fit and needful to be made or used for the said government of the said colony; save always, and except such offices only as shall by us . . . be from time to time constituted and appointed, for the managing collecting and receiving such revenues, as shall from time to time arise within the said province of Georgia, and become due to us . . . Provided always . . ., that every governor of the said province of Georgia, to be appointed by the common council of the said corporation, before he shall enter upon or execute the said office of governor, shall be approved by us . . ., and shall take such oaths, and shall qualify himself in such manner, in all respects, as any governor or commander in chief of any of our colonies or plantations in America, are by law required to do; and shall give good and sufficient security for observing the several acts of parliament relating to trade and navigation, and to observe and obey all instructions that shall be sent to him by us . . ., or any acting under our or their authority, pursuant to the said acts, or any of them. [The corporation may establish and train a militia, fortify and defend the colony, exercise martial law in time of war, &c.] And . . . we do . . . grant, that the governor and commander in chief of the province of South-Carolina . . . for the time being, shall at all times hereafter have the chief command of the militia of our said province . . . And . . . we . . . do give and grant, unto the said corporation and their successors, full power and authority to import and export their goods, at and from any port or ports that shall be appointed by us . . . within the said province of Georgia, for that purpose, without being obliged to touch at any other port in South-Carolina. And we do . . . will and declare, that from and after the termination of the said term or [*of*] twenty-one years, such form of government and method of making laws, statutes and ordinances, for the better governing and ordering the said province of Georgia, and the inhabitants thereof, shall be established and observed within

the same, as we . . . shall hereafter ordain and appoint, and shall be agreeably to law; and that from and after the determination of the said term of twenty-one years, the governor of our said province of Georgia, and all officers civil and military, within the same, shall from time to time be nominated and constituted, and appointed by us . . .

No. 28. Molasses Act

May 17/28, 1733

In the exchange of fish, lumber and agricultural products for the sugar, molasses and rum of the West Indies, the northern English colonies in America early found their most important and most lucrative trade. Moreover, it was by means of this trade that the money for the purchase of manufactured goods in England was mainly obtained. The adoption of a more liberal commercial policy by France, however, in 1717, enabled the sugar of the French West Indies to displace the British product in European markets, and to compete successfully in the markets of the English colonies; while the prohibition of the importation of rum into France, as a protection to the production of brandy, forced the producers of molasses in the French colonies to seek a market in New England and New York, where molasses, little produced in the English West Indies, was much in demand. The prosperity of the French colonies led to numerous protests from planters in the British sugar islands, and in 1731 a bill to prohibit the importation into Great Britain or the American colonies of any foreign sugar, molasses or rum passed the House of Commons, but was rejected by the Lords. The object of the bill was attained, however, by the passage, in 1733, of the so-called Molasses Act, by which practically prohibitory duties were imposed upon the beforementioned articles. The act was systematically disregarded by the English colonies, and remained largely a dead-letter. The Molasses Act was to continue in force for five years; but it was five times renewed, and by the Sugar Act of 1764 was made perpetual.

References. — *Text* in Pickering's *Statutes at Large*, XVI., 374–379. The act is cited as 6 Geo. II., c. 13. The best discussion of the act is in Beer's *Commercial Policy of England* (Columbia Univ. *Studies*, III., No. 2), chap. 6.

An act for the better securing and encouraging the trade of his Majesty's sugar colonies in America.

WHEREAS *the welfare and prosperity of your Majesty's sugar colonies in* America *are of the greatest consequence and importance to the trade, navigation and strength of this kingdom: and whereas*

the planters of the said sugar colonies have of late years fallen under such great discouragements, that they are unable to improve or carry on the sugar trade upon an equal footing with the foreign sugar colonies, without some advantage and relief be given to them from Great Britain: for remedy whereof . . . be it enacted . . ., That from and after . . . [December 25, 1733,] . . . there shall be raised, levied, collected and paid, unto and for the use of his Majesty . . ., upon all rum or spirits of the produce or manufacture of any of the colonies or plantations in *America*, not in the possession or under the dominion of his Majesty . . ., which at any time or times within or during the continuance of this act, shall be imported or brought into any of the colonies or plantations in *America*, which now are or hereafter may be in the possession or under the dominion of his Majesty . . ., the sum of nine pence, money of *Great Britain*, . . . for every gallon thereof, and after that rate for any greater or lesser quantity: and upon all molasses or syrups of such foreign produce or manufacture as aforesaid, which shall be imported or brought into any of the said colonies or plantations . . ., the sum of six pence of like money for every gallon thereof . . .; and upon all sugars and paneles of such foreign growth, produce or manufacture as aforesaid, which shall be imported into any of the said colonies or plantations . . ., a duty after the rate of five shillings of like money, for every hundred weight *Avoirdupoize*. . . .

* * * * * * * *

IV. And be it further enacted . . ., That from and after . . . [December 25, 1733,] . . . no sugars, paneles, syrups or molasses, of the growth, product and manufacture of any of the colonies or plantations in *America*, nor any rum or spirits of *America*, except of the growth or manufacture of his Majesty's sugar colonies there, shall be imported by any person or persons whatsoever into the kingdom of *Ireland*, but such only as shall be fairly and *bona fide* loaden and shipped in *Great Britain* in ships navigated according to the several laws now in being in that behalf, under the penalty of forfeiting all such sugar, paneles, syrups or molasses, rum or spirits, or the value thereof, together with the ship or vessel in which the same shall be imported, with all her guns tackle, furniture, ammunition, and apparel. . . .

* * * * * * * *

IX. And it is hereby further enacted . . ., That in case any sugar or paneles of the growth, produce or manufacture of any of the colonies or plantations belonging to or in the possession of his Majesty . . ., which shall have been imported into *Great Britain* after . . . [June 24, 1733,] . . . shall at any time within one year after the importation thereof, be again exported out of *Great Britain*, . . . all the residue and remainder of the subsidy or duty, by any former act or acts of parliament granted and charged on such sugar or paneles as aforesaid, shall without any delay or reward be repaid to such merchant or merchants, who do export the same, within one month after demand thereof.

X. And it is hereby further enacted . . ., That from and after . . . [June 24, 1733,] . . . for every hundred weight of sugar refined in *Great Britain* . . ., which shall be exported out of this kingdom, there shall be, by virtue of this act, repaid at the custom-house to the exporter, within one month after the demand thereof, over and above the several sums of three shillings and one shilling *per* hundred, payable by two former acts of parliament, one of them made in the ninth and tenth years of the reign of his late Majesty King *William* the Third, and the other in the second and third years of the reign of her late Majesty Queen *Anne*, the further sum of two shillings, oath or solemn affirmation as aforesaid, being first made by the refiner, that the said sugar so exported, was produced from brown and muscovado sugar, and that as he verily believes, the same was imported from some of the colonies or plantations in *America* belonging to and in the possession of the crown of *Great Britain*, and that as he verily believes the duty of the said brown and muscovado sugar was duly paid at the time of the importation thereof, and that the same was duly exported. . . .

* * * * * * * *

No. 29. Writ of Assistance

December 2, 1762

In 1755 a writ of assistance, granting authority to search for and seize uncustomed goods, was issued by the Superior Court of Massachusetts to Charles Paxton, surveyor of the port of Boston. Similar writs were issued in 1758 to the collectors at Salem and Falmouth, in 1759 to the surveyor-general,

and the collectors at Boston and Newburyport, and in 1760 to the collectors at Boston and Salem. By law the writs continued until the demise of the Crown and for six months thereafter. In 1761 the former writs, by reason of the death of George II., being about to expire, the surveyor-general, Thomas Lechmere, made application to the court for the grant of such writs to himself and his officers "as usual." On this application a number of merchants of Boston, and others, petitioned to be heard. The application was argued at Boston at the February term, Jeremiah Gridley appearing for Lechmere, and James Otis and Oxenbridge Thacher for the petitioners and against the writ. Judgment was suspended in order that the court might examine the practice in England. November 18, at the second term, the case was again argued by the same counsel, with the addition of Robert Auchmuty in favor of the writ. The judges were unanimous in their opinion that the writ should be granted, as prayed for, and December 2 a writ was issued to Paxton in the form following. March 6, 1762, a bill "authorizing any judge or justice of the peace, upon information on oath by any officer of the customs, to issue a special writ or warrant of assistance, and prohibiting all others," passed the General Court; but the governor, on the advice of the members of the Superior Court, withheld his approval. Writs of assistance do not appear to have been granted elsewhere in the colonies, except in New Hampshire; they were, however, legalized by the Townshend Revenue Act of 1767 [No. 38]. General warrants were condemned in England in 1766, but general writs of assistance continued to be issued until 1819, when an order of the Board of Customs practically abolished them.

In the manuscript from which the writ following is printed, the words in brackets are interlined, and those in italics erased. The writ was drawn by Thomas Hutchinson, the chief justice.

REFERENCES. — *Text* in Quincy's *Massachusetts Reports*, 418–421, where is also, pp. 395–540, an exhaustive examination of the whole subject by Justice Horace Gray. Otis's argument at the February term, as reported by John Adams, is in the latter's *Works*, II., 521–525; the second argument, in November, is in Quincy, *ut supra*, 51–57. The earlier accounts, especially those in Adams's *Works*, II., 124, note; X., 246–249, 274–276; Tudor's *Otis*, and Minot's *Massachusetts*, must be read in the light of Gray's notes, above.

Prov. of Mass. Bay

SEAL

GEORGE the third by the grace of God of Great Britain France & Ireland King Defender of the faith &c[a].

To ALL & singular our Justices of the peace Sheriffs Constables and to all other our Officers and Subjects within our said Province and to each of you Greeting.

KNOW YE that whereas in and by an Act of Parliament made in the *thir*[four]teenth year of [the reign of] the late King

Charles the second *it is declared to be* [the Officers of our Customs & their Deputies are authorized and impowered to go & enter aboard any Ship or Vessel outward or inward bound for the purposes in the said Act mentioned and it is *also* in & by the said Act further enacted & declared that it shall be] lawful [to or] for any person or persons authorized by Writ of assistants under the seal of our Court of Exchequer to take a Constable Headborough or other publick Officer inhabiting near unto the place and in the day time to enter & go into any House Shop Cellar Warehouse or Room or other place and in case of resistance to break open doors chests trunks & other package there to seize and from thence to bring any kind of goods or merchandize whatsoever prohibited & uncustomed and to put and secure the same in *his Majestys* [our] Storehouse in the port next to the place where such seizure shall be made.

And whereas in & by an Act of Parliament made in the seventh & eighth year of [the reign of the late] King William the third there is granted to the Officers for collecting and managing our revenue and inspecting the plantation trade in any of our plantations [the same powers & authority for visiting & searching of Ships & also] to enter houses or warehouses to search for and seize any prohibited or uncustomed goods as are provided for the Officers of our Customs in England by the said last mentioned Act made in the fourteenth year of [the reign of] King Charles the Second, and the like assistance is required to be given to the said Officers in the execution of their office as by the said last mentioned Act is provided for the Officers in England.

And whereas in and by an Act of our said Province of Massachusetts bay made in the eleventh year of [the reign of] the late King William the third it is enacted & declared that our Superior Court of Judicature Court of Assize and General Goal delivery for our said Province shall have cognizance of all matters and things within our said Province as fully & amply to all intents & purposes as our Courts of King's Bench Common Pleas & Exchequer within our Kingdom of England have or ought to have.

And whereas our Commissioners for managing and causing to be levied & collected our customs subsidies and other duties

have [by Commission or Deputation under their hands & seal dated at London the 22^{d} day of May in the first year of our Reign] deputed and impowered Charles Paxton Esquire to be Surveyor & Searcher of all the rates and duties arising and growing due to us at Boston in our Province aforesaid and [in & by said Commission or Deputation] have given him power to enter into [any Ship Bottom Boat or other Vessel & also into] any Shop House Warehouse Hostery or other place whatsoever to make diligent search into any trunk chest pack case truss or any other parcell or package whatsoever for any goods wares or merchandize prohibited to be imported or exported or whereof the Customs or other Duties have not been duly paid and the same to seize to our use In all things proceeding as the Law directs.

THEREFORE we strictly Injoin & Command you & every one of you that, all excuses apart, you & every one of you permit the said Charles Paxton according to the true intent & form of the said commission or deputation and the laws & statutes in that behalf made & provided, [as well by night as by day from time to time to enter & go on board any Ship Boat or other Vessel riding lying or being within or coming to the said port of Boston or any Places or Creeks thereunto appertaining such Ship Boat or Vessel then & there found to search & oversee and the persons therein being strictly to examine touching the premises aforesaid & also *according to the form effect and true intent of the said commission or deputation*] in the day time to enter & go into the vaults cellars warehouses shops & other places where any prohibited goods wares or merchandizes or any goods wares or merchandizes for which the customs or other duties shall not have been duly & truly satisfied and paid lye concealed or are suspected to be concealed, according to the true intent of the law to inspect & oversee & search for the said goods wares & merchandize, And further to do and execute all things which of right and according to the laws & statutes in this behalf shall be to be done. And we further strictly INJOIN & COMMAND you and every one of you that to the said Charles Paxton Esqr you & every one of you from time to time be aiding assisting & helping in the execution of the premises as is meet. And this you or any of [you] in no wise omit at your perils. WITNESS

Thomas Hutchinson Esq at Boston the day of December in the Second year of our Reign Annoque Dom 1761

By order of Court

N. H.[1] Cler.

No. 30. Treaty of Paris

February 10, 1763

THE Ohio and Mississippi valleys, claimed by the French in right of exploration and colonization, were also claimed by the English under early colonial grants and charters; and these conflicting claims the boundary commissioners, appointed under the treaty of Aix-la-Chapelle, had been unable to reconcile. The Seven Years' war, known in America as the French and Indian war, began two years before the declaration of war by England against France formally opened hostilities in Europe. Washington's unsuccessful expedition against Fort Duquesne, in 1754, was followed in 1755 by the defeat of Braddock and the failure of the contemplated attack upon Canada; but some French forts in Nova Scotia were taken and the Acadians deported. The campaigns of 1756 and 1757 were also without substantial results for the English. The energy of Pitt, whom Newcastle was obliged, in June, 1757, to receive into the ministry as secretary of state, turned the tide. In 1758, Louisburg, Niagara and Fort Duquesne were taken; in September, 1759, Quebec fell; and with the surrender of Montreal, in 1760, the French power in America came to an end. The war in Europe went on for three years longer. In June, 1761, at the instance of France, negotiations for peace were opened; but the signature of the "family compact" between France and Spain, in August, caused them to be broken off. Pitt urged immediate war with Spain; but his views were not supported by the ministry, and he resigned. War against Spain was, however, declared in 1762, and English forces took Havana and Manila. In September, negotiations were resumed; on November 3, preliminaries of peace were signed at Fontainebleau; and on February 10, 1763, the treaty was concluded at Paris. The chief articles relating to America are given in the extracts following. In compensation for the loss of Florida, Spain received from France so much of Louisiana as lay west of the Mississippi river, including both sides of the river at its mouth.

REFERENCES. — *Text* in Chalmers's *Collection of Treaties*, I., 467–483.

IV. His most Christian Majesty renounces all pretensions, which he has heretofore formed, or might form, to Nova Scotia or Acadia, in all its parts, and guaranties the whole of it, and with all its dependencies, to the King of Great Britain: more-

[1] Nathaniel Hatch, one of the clerks of court. — ED.

over, his most Christian Majesty cedes and guaranties to his said Britannic Majesty, in full right, Canada, with all its dependencies, as well as the Island of Cape Breton, and all the other islands and coasts in the gulph and river St. Laurence, and, in general, every thing that depends on the said countries, lands, islands, and coasts, with the sovereignty, property, possession, and all rights, acquired by treaty or otherwise, which the most Christian King, and the crown of France, have had till now over the said countries, islands, lands, places, coasts, and their inhabitants . . . His Britannic Majesty, on his side, agrees to grant the liberty of the Catholic religion to the inhabitants of Canada: he will consequently give the most precise and most effectual orders, that his new Roman Catholic subjects may profess the worship of their religion, according to the rites of the Romish church, as far as the laws of Great Britain permit. His Britannic Majesty further agrees, that the French inhabitants, or others who had been subjects of the most Christian King in Canada, may retire, with all safety and freedom, wherever they shall think proper, and may sell their estates, provided it be to subjects of his Britannic Majesty, and bring away their effects, as well as their persons, without being restrained in their emigration, under any pretence whatsoever, except that of debts, or of criminal prosecutions: the term limited for this emigration shall be fixed to the space of eighteen months, to be computed from the day of the exchange of the ratifications of the present treaty.

V. The subjects of France shall have the liberty of fishing and drying, on a part of the coasts of the Island of Newfoundland, such as it is specified in the XIIIth article of the treaty of Utrecht; which article is renewed and confirmed by the present treaty (except what relates to the island of Cape Breton, as well as to the other islands and coasts in the mouth and in the gulph of St. Laurence:) and his Britannic Majesty consents to leave to the subjects of the most Christian King the liberty of fishing in the gulph St. Laurence, on condition that the subjects of France do not exercise the said fishery but at the distance of three leagues from all the coasts belonging to Great Britain, as well those of the continent, as those of the islands situated in the said gulph of St. Laurence. And as to what relates to the fishery on the coasts of the island of Cape Breton out of the said gulph

the subjects of the most Christian King shall not be permitted to exercise the said fishery but at the distance of fifteen leagues from the coasts of the island of Cape Breton; and the fishery on the coasts of Nova Scotia or Acadia, and every where else out of the said gulph, shall remain on the foot of former treaties.

VI. The King of Great Britain cedes the islands of St. Pierre and Miquelon, in full right, to his most Christian Majesty, to serve as a shelter to the French fishermen: and his said most Christian Majesty engages not to fortify the said islands; to erect no building upon them, but merely for the convenience of the fishery; and to keep upon them a guard of fifty men only for the police.

VII. . . . it is agreed, that, for the future, the confines between the dominions of his Britannic Majesty, and those of his most Christian Majesty, in that part of the world, shall be fixed irrevocably by a line drawn along the middle of the river Mississippi, from its source to the river Iberville, and from thence, by a line drawn along the middle of this river, and the lakes Maurepas and Pontchartrain, to the sea; and for this purpose, the most Christian King cedes in full right, and guaranties to his Britannic Majesty, the river and port of the Mobile, and every thing which he possesses, or ought to possess, on the left side of the river Mississippi, except the town of New Orleans, and the island on which it is situated, which shall remain to France; provided that the navigation of the river Mississippi shall be equally free, as well to the subjects of Great Britain as to those of France, in its whole breadth and length, from its source to the sea, and expresly that part which is between the said island of New Orleans and the right bank of that river, as well as the passage both in and out of its mouth. It is further stipulated, that the vessels belonging to the subjects of either nation shall not be stopped, visited, or subjected to the payment of any duty whatsoever. The stipulations, inserted in the IVth article, in favour of the inhabitants of Canada, shall also take place with regard to the inhabitants of the countries ceded by this article.

VIII. The King of Great Britain shall restore to France the islands of Guadeloupe, of Marie Galante, of Desirade, of Martinico, and of Belleisle; and the fortresses of these islands shall

be restored in the same condition they were in when they were conquered by the British arms . . .

IX. The most Christian King cedes and guaranties to his Britannic Majesty, in full right, the islands of Grenada, and of the Grenadines, with the same stipulations in favour of the inhabitants of this colony, inserted in the IVth article for those of Canada: and the partition of the islands, called Neutral, is agreed and fixed, so that those of St. Vincent, Dominica, and Tobago, shall remain in full right to Great Britain, and that of St. Lucia shall be delivered to France. . . .

* * * * * * * *

XIX. The King of Great Britain shall restore to Spain all the territory, which he has conquered in the island of Cuba, with the fortress of the Havana, and this fortress, as well as all the other fortresses of the said island, shall be restored in the same condition they were in when conquered by his Britannic Majesty's arms . . .

XX. In consequence of the restitution stipulated in the preceding article, his Catholic Majesty cedes and guaranties, in full right, to his Britannic Majesty, Florida, with Fort St. Augustin, and the Bay of Pensacola, as well as all that Spain possesses on the continent of North America, to the east, or to the south-east, of the river Mississippi; and, in general, every thing that depends on the said countries, and lands . . . His Britannic Majesty agrees, on his side, to grant to the inhabitants of the countries, above ceded, the liberty of the Catholic religion: he will consequently give the most express and the most effectual orders, that his new Roman Catholic subjects may profess the worship of their religion, according to the rites of the Romish church, as far as the laws of Great Britain permit: [the Spanish inhabitants to be permitted to remove, or to sell their estates, under conditions as in Art. IV.] It is moreover stipulated, that his Catholic Majesty shall have power to cause all the effects, that may belong to him, to be brought away, whether it be artillery or other things.

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No. 31. Royal Proclamation concerning America

October 7, 1763

THE principal objects of the royal proclamation of 1763 were, to provide for the government of the British possessions in America which had been acquired by the treaty of Paris; to define certain interior boundaries; and to regulate trade and intercourse with the Indians.

REFERENCES. — *Text* in the *Annual Register* (1763), 208–213.

WHEREAS we have taken into our royal consideration the extensive and valuable acquisitions in America, secured to our crown by the late definitive treaty of peace concluded at Paris the 10th day of February last; . . . we have thought fit . . . hereby to publish and declare to all our loving subjects, that we have, with the advice of our said privy council, granted our letters patent under our great seal of Great Britain, to erect within the countries and islands, ceded and confirmed to us by the said treaty, four distinct and separate governments, stiled and called by the names of Quebec, East Florida, West Florida, and Grenada, and limited and bounded as follows, viz.

First, the government of Quebec, bounded on the Labrador coast by the river St. John, and from thence by a line drawn from the head of that river, through the lake St. John, to the South end of the lake Nipissim; from whence the said line crossing the river St. Lawrence and the lake Champlain in 45 degrees of North latitude, passes along the High Lands, which divide the rivers that empty themselves into the said river St. Lawrence, from those which fall into the sea; and also along the North coast of the Bayes des Chaleurs, and the coast of the Gulph of St. Lawrence to Cape Rosieres, and from thence crossing the mouth of the river St. Lawrence by the West end of the island of Anticosti, terminates at the aforesaid river St. John.

Secondly, The government of East Florida, bounded to the Westward by the Gulph of Mexico and the Apalachicola river; to the Northward, by a line drawn from that part of the said river where the Catahoochee and Flint rivers meet, to the source of St

Mary's river, and by the course of the said river to the Atlantic Ocean; and to the East and South by the Atlantic Ocean, and the Gulph of Florida, including all islands within six leagues of the sea coast.

Thirdly, The government of West Florida, bounded to the Southward by the Gulph of Mexico, including all islands within six leagues of the coast from the river Apalachicola to lake Pontchartrain; to the Westward by the said lake, the lake Maurepas, and the river Mississippi; to the Northward, by a line drawn due East from that part of the river Mississippi which lies in thirty-one degrees North latitude, to the river Apalachicola, or Catahoochee; and to the Eastward by the said river.

Fourthly, The government of Grenada, comprehending the island of that name, together with the Grenadines, and the islands of Dominico, St. Vincent, and Tobago.

And to the end that the open and free fishery of our subjects may be extended to, and carried on upon the coast of Labrador and the adjacent islands, we have thought fit . . . to put all that coast, from the river St. John's to Hudson's Streights, together with the islands of Anticosti and Madelane, and all other smaller islands lying upon the said coast, under the care and inspection of our governor of Newfoundland.

We have also . . . thought fit to annex the islands of St. John and Cape Breton, or Isle Royale, with the lesser islands adjacent thereto, to our government of Nova Scotia.

We have also . . . annexed to our province of Georgia, all the lands lying between the rivers Attamaha and St. Mary's.

And . . . we have . . . given express power and direction to our governors of our said colonies respectively, that so soon as the state and circumstances of the said colonies will admit thereof, they shall, with the advice and consent of the members of our council, summon and call general assemblies within the said governments respectively, in such manner and form as is used and directed in those colonies and provinces in America, which are under our immediate government; and we have also given power to the said governors, with the consent of our said councils, and the representatives of the people, so to be summoned as aforesaid, to make, constitute, and ordain laws, statutes, and ordinances for the public peace, welfare, and good government of our

said colonies, and of the people and inhabitants thereof, as near as may be, agreeable to the laws of England, and under such regulations and restrictions as are used in other colonies; and in the mean time, and until such assemblies can be called as aforesaid, all persons inhabiting in, or resorting to, our said colonies, may confide in our royal protection for the enjoyment of the benefit of the laws of our realm of England: for which purpose we have given power under our great seal to the governors of our said colonies respectively, to erect and constitute, with the advice of our said councils respectively, courts of judicature and public justice within our said colonies, for the hearing and determining all causes as well criminal as civil, according to law and equity, and as near as may be, agreeable to the laws of England, with liberty to all persons who may think themselves aggrieved by the sentence of such courts, in all civil cases, to appeal, under the usual limitations and restrictions, to us, in our privy council.

[Governors of the three new continental colonies may grant land therein.]

And . . . we do hereby command and impower our governors of our said three new colonies, and other our governors of our several provinces on the continent of North America, to grant, without fee or reward, to such reduced officers as have served in North America during the late war, and are actually residing there, and shall personally apply for the same, the following quantities of land, subject, at the expiration of ten years, to the same quit rents as other lands are subject to in the province within which they are granted, as also subject to the same conditions of cultivation and improvement, viz.

To every person having the rank of a field officer, 5000 acres.

To every captain, 3000 acres.

To every subaltern or staff officer, 2000 acres.

To every non-commission officer, 200 acres.

To every private man 50 acres.

We do likewise authorise and require the governors and commanders in chief of all our said colonies upon the continent of North America to grant the like quantities of land, and upon the same conditions, to such reduced officers of our navy of like rank, as served on board our ships of war in North America at the times of the reduction of Louisbourg and Quebec in the late

war, and who shall personally apply to our respective governors for such grants.

And whereas it is just and reasonable, and essential to our interest, and the security of our colonies, that the several nations or tribes of Indians, with whom we are connected, and who live under our protection, should not be molested or disturbed in the possession of such parts of our dominions and territories as, not having been ceded to, or purchased by us, are reserved to them, or any of them, as their hunting grounds; we do . . . declare it to be our royal will and pleasure, that no governor, or commander in chief, in any of our colonies of Quebec, East Florida, or West Florida, do presume, upon any pretence whatever, to grant warrants of survey, or pass any patents for lands beyond the bounds of their respective governments, as described in their commissions; as also that no governor or commander in chief of our other colonies or plantations in America, do presume for the present, and until our further pleasure be known, to grant warrant of survey, or pass patents for any lands beyond the heads or sources of any of the rivers which fall into the Atlantic Ocean from the west or north-west; or upon any lands whatever, which not having been ceded to, or purchased by us, as aforesaid, are reserved to the said Indians, or any of them.

And we do further declare it to be our royal will and pleasure, for the present, as aforesaid, to reserve under our sovereignty, protection, and dominion, for the use of the said Indians, all the land and territories not included within the limits of our said three new governments, or within the limits of the territory granted to the Hudson's Bay company; as also all the land and territories lying to the westward of the sources of the rivers which fall into the sea from the west and north-west as aforesaid . . .

[Persons who have inadvertently settled upon such reserved lands to remove. No sale of Indian lands to be allowed, except to the Crown. The Indian trade to be free to English subjects, under licence from the governor or commander in chief of some colony. Fugitives from justice, taking refuge in this reserved territory, to be apprehended and returned.]

No. 32. Sugar Act

April 5, 1764

ALTHOUGH the Seven Years' war had left Great Britain with a heavy debt, the expense of protecting the English possessions in America seemed likely to increase rather than diminish. The direct advantages of the expulsion of the French had accrued mainly to the colonies, and it seemed proper to the ministry that a revenue should be raised in America for the support of the military establishment there. In connection with the plan for a colonial army, it was the desire to provide stronger support for the representatives of the crown, and to put an end to the widespread violation of the acts of trade. "February 23, 1763, Charles Townshend became first lord of trade, with the administration of the colonies, and he inaugurated, with the support of the ministry, the new system of colonial government. It was announced by authority that there were to be no more requisitions from the king to the colonial assemblies for supplies, but that the colonies were to be taxed by act of Parliament. Colonial governors and judges were to be paid by the Crown; they were to be supported by a standing army of twenty regiments; and all the expenses of this force were to be paid by parliamentary taxation" (Johnston). Grenville, who succeeded Bute in April as prime minister, was committed to this policy, and in May the Lords of Trade were called upon to submit a plan of colonial taxation. The duties prescribed by the Molasses Act of 1733 [No. 28] were prohibitory, and the statute itself had remained inoperative. To provide in part for the intended revenue, the act of April 5, 1764, known as the Sugar Act, was now passed, imposing duties upon certain colonial imports and exports. The Molasses Act was also made perpetual, but with a reduction by one-half of the duty on molasses and sugar.

The extracts following give the important sections of the act, omitting technical and administrative provisions.

REFERENCES. — *Text* in Pickering's *Statutes at Large*, XXVI., 33–52. The act is cited as 4 Geo. III., c. 15. On the act see especially Beer's *Commercial Policy of England*, chap. 8, and references there cited.

An act for granting certain duties in the British *colonies and plantations in* America; *for continuing, amending, and making perpetual . . .* [the Molasses Act of 1733] *. . . ; for applying the produce of such duties, and of the duties to arise by virtue of the said act, towards defraying the expences of defending, protecting, and securing the said colonies and plantations; for explaining . . .* [the Navigation Act of 1672] *. . . ; and for altering and disallowing several drawbacks on exports from this kingdom, and more effectually preventing the clandestine conveyance of goods to and from the said colonies and plantations, and im-*

proving and securing the trade between the same and Great Britain.

WHEREAS *it is expedient that new provisions and regulations should be established for improving the revenue of this Kingdom, and for extending and securing the navigation and commerce between* Great Britain *and your Majesty's dominions in* America, *which, by the peace, have been so happily enlarged: and whereas it is just and necessary, that a revenue be raised, in your Majesty's said dominions in* America, *for defraying the expences of defending, protecting, and securing the same;* . . . be it enacted . . . , That from and after . . . [September 29, 1764,] . . . there shall be raised, levied, collected, and paid, unto his Majesty . . . , for and upon all white or clayed sugars of the produce or manufacture of any colony or plantation in *America*, not under the dominion of his Majesty . . . ; for and upon indico, and coffee of foreign produce or manufacture; for and upon all wines (except *French* wine;) for and upon all wrought silks, bengals, and stuffs, mixed with silk or herba, of the manufacture of *Persia*, *China*, or *East India*, and all callico painted, dyed, printed, or stained there; and for and upon all foreign linen cloth called *Cambrick* and *French* Lawns, which shall be imported or brought into any colony or plantation in *America*, which now is, or hereafter may be, under the dominion of his Majesty . . . , the several rates and duties following; that is to say,

For every hundred weight avoirdupois of such foreign white or clayed sugars, one pound two shillings, over and above all other duties imposed by any former act of parliament.

For every pound weight avoirdupois of such foreign indico, six pence.

For every hundred weight avoirdupois of such foreign coffee, which shall be imported from any place except *Great Britain*, two pounds, nineteen shillings, and nine pence.

For every ton of wine of the growth of the *Madeiras*, or of any other island or place from whence such wine may be lawfully imported, and which shall be so imported from such islands or places, the sum of seven pounds.

For every ton of *Portugal*, *Spanish*, or any other wine (except *French* wine) imported from *Great Britain*, the sum of ten shillings.

For every pound weight avoirdupois of wrought silks, bengals, and stuffs, mixed with silk or herba, of the manufacture of *Persia*, *China*, or *East India*, imported from *Great Britain*, two shillings.

For every piece of callico painted, dyed, printed, or stained, in *Persia*, *China*, or *East India*, imported from *Great Britain*, two shillings and six pence.

For every piece of foreign linen cloth, called *Cambrick*, imported from *Great Britain*, three shillings.

For every piece of *French* lawn imported from *Great Britain* three shillings. . . .

II. And it is hereby further enacted . . . That from and after . . . [September 29, 1764] . . . there shall also be raised, levied, collected, and paid, unto his Majesty . . . , for and upon all coffee and pimento of the growth and produce of any *British* colony or plantation in *America*, which shall be there laden on board any *British* ship or vessel, to be carried out from thence or any other place whatsoever, except *Great Britain*, the several rates and duties following; that is to say,

III. For every hundred weight avoirdupois of such *British* coffee, seven shillings.

For every pound weight avoirdupois of such *British* pimento, one halfpenny. . . .

[Sections V. and VI. continue the Molasses Act in force until Sept. 30, 1764, after which it is to be perpetual, subject to the changes in this present act.]

VI. And be it further enacted . . . , That in lieu and instead of the rate and duty imposed by the said act upon melasses and syrups, there shall, from and after . . . [September 29, 1764] . . . , be raised, levied, collected, and paid, unto his Majesty . . . , for and upon every gallon of melasses or syrups, being the growth, produce, or manufacture, of any colony or plantation in *America*, not under the dominion of his Majesty . . . , which shall be imported or brought into any colony or plantation in *America*, which now is, or hereafter may be, under the dominion of his Majesty . . . , the sum of three pence.

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XI. And it is hereby further enacted . . . , That all the monies which, from and after . . . [September 29, 1764] . . . , shall arise by the several rates and duties herein before granted; and

also by the duties which, from and after the said [date], shall be raised upon sugars and paneles, by virtue of . . . [the Molasses Act] . . ., (except the necessary charges of raising, collecting, levying, recovering, answering, paying, and accounting for the same) shall be paid into the receipt of his Majesty's Exchequer, and shall be entered separate and apart from all other monies paid or payable to his Majesty . . . : and shall be there reserved to be, from time to time, disposed of by parliament, towards defraying the necessary expences of defending, protecting, and securing, the *British* colonies and plantations in *America*.

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XVIII. And be it further enacted . . . , That from and after . . . [September 29, 1764] . . . , no rum or spirits of the produce or manufacture of any of the colonies or plantations in *America*, not in the possession or under the dominion of his Majesty . . . , shall be imported or brought into any of the colonies or plantations in *America* which now are, or hereafter may be, in the possession or under the dominion of his Majesty . . . , upon forfeiture of all such rum or spirits, together with the ship or vessel in which the same shall be imported, with the tackle, apparel, and furniture thereof. . . .

XIX. And it is hereby further enacted . . . , That from and after . . . [September 29, 1764] . . . , nothing in . . . [the Molasses Act,] . . . or any other act of parliament, shall extend, or be construed to extend, to give liberty to any person or persons whatsoever to import into the kingdom of *Ireland*, any sort of sugars, but such only as shall be fairly and *bona fide* loaden and shipped in *Great Britain*, and carried directly from thence in ships navigated according to law.

* * * * * * * *

XXVII. And it is hereby further enacted . . . , That from and after . . . [September 29, 1764] . . . , all coffee, pimento, cocoa nuts, whale fins, raw silk, hides, and skins, pot and pearl ashes, of the growth, production, or manufacture, of any *British* colony or plantation in *America*, shall be imported directly from thence into this kingdom, or some other *British* colony or plantation . . .

XXVIII. And it is hereby further enacted . . . , That from and after . . . [September 29, 1764] . . . , no iron, nor any sort

of wood, commonly called *Lumber*, as specified in an act passed in the eighth year of the reign of King *George* the First, intituled, *An act for giving further encouragement for the importation of naval stores, and for other purposes therein mentioned*, of the growth, production, or manufacture, of any *British* colony or plantation in *America*, shall be there loaden on board any ship or vessel to be carried from thence, until sufficient bond shall be given, with one surety besides the master of the vessel, to the collector or other principal officer of the customs at the loading port, in a penalty of double the value of the goods, with condition, that the said goods shall not be landed in any part of *Europe* except *Great Britain*. . . .

XXIX. And, for the better preventing frauds in the importation or exportation of goods that are liable to the payment of duties, or are prohibited, in the *British* colonies or plantations in *America*, it is further enacted . . . , That from and after . . . [September 29, 1764] . . . , no goods, wares, or merchandizes, of any kind whatsoever, shall be shipped or laden on board any ship or vessel in any of the *British* colonies or plantations in *America*, to be carried from thence to any other *British* colony or plantation, without a sufferance or warrant first had and obtained from the collector or other proper officer of the customs at the port or place where such goods shall be intended to be put on Board. . . .

XXX. And whereas *British* vessels arriving from foreign parts at several of the out ports of this kingdom, fully or in part laden abroad with goods that are pretended to be destined to some foreign plantation, do frequently take on board some small parcels of goods in this kingdom which are entered outwards for some *British* colony or plantation, and a cocket and clearance thereupon granted for such goods, under cover of which the whole cargoes of such vessels are clandestinely landed in the *British American* dominions, contrary to several acts of parliament now in force, to the great prejudice of the trade and revenue of this kingdom; for remedy whereof, be it further enacted . . . , That from and after . . . [May 1, 1764,] . . . no ship or vessel shall, upon any pretence whatsoever, be cleared outwards from any port of this kingdom, for any land, island, plantation, colony, territory, or place to his Majesty belonging, or

which shall hereafter belong unto or be in the possession or under the dominion of his Majesty . . . , in *America*, unless the whole and entire cargo of such ship or vessel shall be *bona fide*, and without fraud, laden and shipped in this kingdom. . . .

XXXI. Provided always, That this act shall not extend, nor be construed to extend, to forfeit, for want of such cocket or clearance, any salt laden in *Europe* for the fisheries in *New England*, *Newfoundland*, *Pensylvania*, *New York*, and *Nova Scotia*, or any other place to which salt is or shall be allowed by law to be carried; wines laden in the *Madeiras*, of the growth thereof; and wines of the growth of the *Western Islands*, or *Azores*, and laden there; nor any horses, victuals, or linen cloth, of and from *Ireland*, which may be laden on board such ships or vessels.

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No. 33. Stamp Act

March 22, 1765

A STAMP act formed part of the plan of colonial taxation outlined by Townshend in 1763, and adopted by Grenville when the latter became prime minister (see note to No. 32). In September, 1763, the commissioners of stamp duties were requested to draft provisions for the extension of those duties to America. In March, 1764, shortly before the passage of the Sugar Act, Grenville announced his intention of introducing, at the next session, a stamp bill; and the plan received the approval of Parliament. In the meantime, opportunity was given the colonial agents to communicate with their respective governments, in order that the colonies, in case the stamp tax were deemed objectionable, might agree upon some other method of raising the desired revenue. The prospect of parliamentary taxation was viewed with alarm in America, where a stricter enforcement of the acts of trade was already thought to threaten disaster to commerce. When, however, the subject was again brought before Parliament by Grenville, in February, 1765, the colonial agents, although remonstrating against the proposed measure, were unable to recommend any substitute; while petitions from the colonial assemblies, and from London merchants interested in the American trade, were refused consideration, under a rule of the House of Commons forbidding the reception of petitions on money bills. There was little opposition in Parliament, and the bill passed the Commons by a vote of 205 to 49, and the Lords without a division. George III. was at the time insane, and the act received the royal assent, March 22, by commission.

REFERENCES. — *Text* in Pickering's *Statutes at Large*, XXVI., 179–204. The act is cited as 5 Geo. III., c. 12. The proceedings in Parliament may be followed in the *Parliamentary History*, XV., XVI., and the *Annual Register* (1765). The fullest account of the debates is in Bancroft's *United States* (ed. 1852), V. Bradford's *Massachusetts State Papers*, 33–92, gives the addresses and messages of Governor Bernard, and the answers of the House of Representatives, of that colony, in relation to the act and its repeal. The best-known contemporary expression of American opinion, called out by the Sugar Act and the proposal of a stamp act, is Otis's *Rights of the British Colonies;* for a more moderate statement, see Stephen Hopkins's *Rights of the Colonies Examined* (in R. I. Col. Records, VI.).

An act for granting and applying certain stamp duties, and other duties, in the British *colonies and plantations in* America, *towards further defraying the expences of defending, protecting, and securing the same; and for amending such parts of the several acts of parliament relating to the trade and revenues of the said colonies and plantations, as direct the manner of determining and recovering the penalties and forfeitures therein mentioned.*

WHEREAS by an act made in the last session of parliament, several duties were granted, continued, and appropriated, towards defraying the expences of defending, protecting, and securing, the British *colonies and plantations in* America: *and whereas it is just and necessary, that provision be made for raising a further revenue within your Majesty's dominions in* America, *towards defraying the said expences:* . . . be it enacted . . . , That from and after . . . [November 1, 1765,] . . . there shall be raised, levied, collected, and paid unto his Majesty, his heirs, and successors, throughout the colonies and plantations in *America* which now are, or hereafter may be, under the dominion of his Majesty, his heirs and successors,

For every skin or piece of vellum or parchment, or sheet or piece of paper, on which shall be ingrossed, written or printed, any declaration, plea, replication, rejoinder, demurrer, or other pleading, or any copy thereof, in any court of law within the *British* colonies and plantations in *America*, a stamp duty of three pence.

[Then follow specifications of numerous kinds of legal documents, with the several rates of duty thereon.]

For every skin . . . on which shall be ingrossed . . . any note or bill of lading, which shall be signed for any kind of goods, wares, or merchandize, to be exported from, or any cocket or clearance granted within the said colonies and plantations, a stamp duty of four pence.

For every skin . . . on which shall be ingrossed . . . letters of mart, or commission for private ships of war . . . , a stamp duty of twenty shillings.

For every skin . . . on which shall be ingrossed . . . any grant, appointment, or admission of or to any publick beneficial office or employment, for the space of one year, or any lesser time, of or above the value of twenty pounds *per annum* sterling money, in salary, fees, and perquisites . . . , (except commissions and appointments of officers of the army, navy, ordnance, or militia, of judges, and of justices of the peace) a stamp duty of ten shillings.

For every skin . . . on which any grant of any liberty, privilege, or franchise, under the seal of any of the said colonies or plantations, or under the seal or sign manual of any governor, proprietor, or publick officer alone, or in conjunction with any other person or persons, or with any council, or any council and assembly, or any exemplification of the same, shall be ingrossed . . . , a stamp duty of six pounds.

For every skin . . . on which shall be ingrossed . . . any licence for retailing of spirituous liquors, to be granted to any person who shall take out the same . . . , a stamp duty of twenty shillings.

[Specifications of duties on other forms of liquor licenses follow.]

For every skin . . . on which shall be ingrossed . . . any probate of a will, letters of administration, or of guardianship for any estate above the value of twenty pounds sterling money; within the *British* colonies and plantations upon the continent of *America*, the islands belonging thereto, and the *Bermuda* and *Bahama* islands, a stamp duty of five shillings.

For every skin . . . on which shall be ingrossed . . . any such probate, letters of administration or of guardianship, within all other parts of the *British* dominions in *America*, a stamp duty of ten shillings.

For every skin . . . on which shall be ingrossed . . . any bond for securing the payment of any sum of money, not exceeding the

sum of ten pounds sterling money, within the *British* colonies and plantations upon the continent of *America*, the islands belonging thereto, and the *Bermuda* and *Bahama* islands, a stamp duty of six pence.

[Bonds for sums above £10 and not exceeding £20, one shilling; above £20 and not exceeding £40, one shilling and sixpence.]

For every skin . . . on which shall be ingrossed . . . any order or warrant for surveying or setting out any quantity of land, not exceeding one hundred acres, issued by any governor, proprietor, or any publick officer alone, or in conjunction with any other person or persons, or with any council, or any council and assembly, within the *British* colonies and plantations in *America*, a stamp duty of six pence. [Further provision for larger grants.]

For every skin . . . on which shall be ingrossed . . . any original grant, or any deed, mesne conveyance, or other instrument whatsoever, by which any quantity of land not exceeding one hundred acres shall be granted, conveyed, or assigned, within the *British* colonies and plantations upon the continent of *America*, the islands belonging thereto, and the *Bermuda* and *Bahama* islands (except leases for any term not exceeding the term of twenty one years) a stamp duty of one shilling and six pence. [Further provision for larger grants.]

For every skin . . . on which shall be ingrossed . . . any such original grant . . . by which any quantity of land not exceeding one hundred acres shall be granted . . . within all other parts of the *British* dominions in *America*, a stamp duty of three shillings. [Further provision for larger grants.]

For every skin . . . on which shall be ingrossed . . . any grant, appointment, or admission, of or to any publick beneficial office or employment, not herein before charged, above the value of twenty pounds *per annum* sterling money in salary, fees, and perquisites, or any exemplification of the same, within the *British* colonies and plantations upon the continent of *America*, the islands belonging thereto, and the *Bermuda* and *Bahama* islands (except commissions of officers of the army, navy, ordnance, or militia, and of justices of the peace) a stamp duty of four pounds.

For every skin . . . on which shall be ingrossed . . . any such grant . . . within all other parts of the *British* dominions in *America*, a stamp duty of six pounds.

For every skin . . . on which shall be ingrossed . . . any indenture, lease, conveyance, contract, stipulation, bill of sale, charter party, protest, articles of apprenticeship, or covenant (except for the hire of servants not apprentices, and also except such other matters as are herein before charged) within the *British* colonies and plantations in *America*, a stamp duty of two shillings and six pence.

For every skin . . . on which any warrant or order for auditing any publick accounts, beneficial warrant, order, grant, or certificate, under any publick seal, or under the seal or sign manual of any governor, proprietor, or publick officer alone, or in conjunction with any other person or persons, or with any council, or any council and assembly, not herein before charged, or any passport or let-pass, surrender of office, or policy of assurance, shall be ingrossed . . . (except warrants or orders for the service of the navy, army, ordnance, or militia, and grants of offices under twenty pounds *per annum* in salary, fees, and perquisites) a stamp duty of five shillings.

For every skin . . . on which shall be ingrossed . . . any notarial act, bond, deed, letter of attorney, procuration, mortgage, release, or other obligatory instrument, not herein before charged . . . , a stamp duty of two shillings and three pence.

For every skin . . . on which shall be ingrossed . . . any register, entry, or inrollment of any grant, deed, or other instrument whatsoever herein before charged . . . , a stamp duty of three pence.

For every skin . . . on which shall be ingrossed . . . any register, . . . not herein before charged . . . , a stamp duty of two shillings.

And for and upon every pack of playing cards, and all dice, which shall be sold or used . . . , the several stamp duties following (that is to say)

For every pack of such cards, the sum of one shilling.

And for every pair of such dice, the sum of ten shillings.

And for and upon every paper, commonly called a *pamphlet*, and upon every news paper . . . and for and upon such advertisements as are herein after mentioned, the respective duties following (that is to say)

For every such pamphlet and paper contained in half a sheet

or any lesser piece of paper . . . , a stamp duty of one half-penny, for every printed copy thereof.

For every such pamphlet and paper (being larger than half a sheet, and not exceeding one whole sheet) . . . , a stamp duty of one penny, for every printed copy thereof.

For every pamphlet and paper being larger than one whole sheet, and not exceeding six sheets in octavo, or in a lesser page, or not exceeding twelve sheets in quarto, or twenty sheets in folio . . . , a duty after the rate of one shilling for every sheet of any kind of paper which shall be contained in one printed copy thereof.

For every advertisement to be contained in any gazette, news paper, or other paper, or any pamphlet . . . , a duty of two shillings.

For every almanack or calendar, for any one particular year, or for any time less than a year, which shall be written or printed on one side only of any one sheet, skin, or piece of paper parchment, or vellum . . . , a stamp duty of two pence.

For every other almanack or calendar for any one particular year . . . , a stamp duty of four pence.

And for every almanack or calendar written or printed . . . , to serve for several years, duties to the same amount respectively shall be paid for every such year.

For every skin . . . on which any instrument, proceeding, or other matter or thing aforesaid, shall be ingrossed . . . , in any other than the *English* language, a stamp duty of double the amount of the respective duties before charged thereon.

And there shall be also paid . . . a duty of six pence for every twenty shillings, in any sum not exceeding fifty pounds sterling money, which shall be given, paid, contracted, or agreed for, with or in relation to any clerk or apprentice, which shall be put or placed to or with any master or mistress to learn any profession, trade, or employment.

II. And also a duty of one shilling for every twenty shillings, in any sum exceeding fifty pounds, which shall be given, paid, contracted, or agreed, for, with, or in relation to any such clerk or apprentice.

* * * * * * * *

V. And be it further enacted . . . , That all books and pam-

phlets serving chiefly for the purpose of an almanack, by whatsoever name or names intituled or described, are and shall be charged with the duty imposed by this act on almanacks, but not with any of the duties charged by this act on pamphlets, or other printed papers . . .

VI. Provided always, that this act shall not extend to charge any bills of exchange, accompts, bills of parcels, bills of fees, or any bills or notes not sealed for payment of money at sight, or upon demand, or at the end of certain days of payment.

* * * * * * * *

X. Provided always, That this act shall not extend to charge any proclamation, forms of prayer and thanksgiving, or any printed votes of any house of assembly in any of the said colonies and plantations, with any of the said duties on pamphlets or news papers; or to charge any books commonly used in any of the schools within the said colonies and plantations, or any books containing only matters of devotion or piety; or to charge any single advertisement printed by itself, or the daily accounts or bills of goods imported and exported . . .

* * * * * * * *

XII. And be it further enacted . . . , That the said several duties shall be under the management of the commissioners, for the time being, of the duties charged on stamped vellum, parchment, and paper, in *Great Britain:* and the said commissioners are hereby impowered and required to employ such officers under them, for that purpose, as they shall think proper . . .

* * * * * * * *

XV. And be it further enacted . . . , That if any person or persons shall sign, ingross, write, print, or sell, or expose to sale, or cause to be signed, ingrossed, written, printed, or sold, or exposed to sale, in any of the said colonies or plantations, or in any other part of his Majesty's dominions, any matter or thing, for which the vellum . . . is hereby charged to pay any duty, before the same shall be marked or stamped with the marks or stamps to be provided as aforesaid, or upon which there shall not be some stamp or mark resembling the same; or shall sign,

ingross, . . . or expose to sale . . . , any matter or thing upon any vellum . . . that shall be marked or stamped for any lower duty than the duty by this act made payable in respect thereof; every such person so offending shall, for every such offence, forfeit the sum of ten pounds.

XVI. And be it further enacted . . . , That no matter or thing whatsoever, by this act charged with the payment of a duty, shall be pleaded or given in evidence, or admitted in any court within the said colonies and plantations, to be good, useful, or available in law or equity, unless the same shall be marked or stamped, in pursuance of this act, with the respective duty hereby charged thereon, or with an higher duty.

* * * * * * * *

XXI. And be it further enacted . . . , That if any register, puklick officer, clerk, or other person in any court, registry, or office within any of the said colonies or plantations, shall, at any time after . . . [November 1, 1765,] . . . enter, register, or inroll, any matter or thing hereby charged with a stamp duty, unless the same shall appear to be duly stamped; in every such case such register, publick officer, clerk, or other person, shall, for every such offence, forfeit the sum of twenty pounds.

* * * * * * * *

XXVII. And it is hereby further enacted . . . , That no person whatsoever shall sell or expose to sale any such pamphlet, or any news paper, without the true respective name or names, and place or places of abode, of some known person or persons by or for whom the same was really and truly printed or published, shall be written or printed thereon; upon pain that every person offending therein shall, for every such offence, forfeit the sum of twenty pounds.

* * * * * * * *

XXXII. And it is hereby further enacted . . . , That from and after . . . [November 1, 1765,] . . . in case any person or persons, within any of the said colonies . . . , shall sell, hawk, carry about, utter, or expose to sale, any almanack, or calendar, or any news paper, or any book, pamphlet, or paper, deemed or construed to be, or serving the purpose of, an almanack or news paper, within the intention and meaning of this act, not being

stamped or marked as by this act is directed; every such person, shall for every such offence, forfeit the sum of forty shillings.

* * * * * * * *

LIV. And be it further enacted . . . , That all the monies which shall arise by the several rates and duties hereby granted (except the necessary charges of raising, collecting, recovering, answering, paying, and accounting for the same and the necessary charges from time to time incurred in relation to this act, and the execution thereof) shall be paid into the receipt of his Majesty's exchequer, and shall be entered separate and apart from all other monies, and shall be there reserved to be from time to time disposed of by parliament, towards further defraying the necessary expences of defending, protecting, and securing, the said colonies and plantations.

* * * * * * * *

LVII. [Forfeitures and penalties incurred after September 29, 1765, for offences against the Sugar Act (4 Geo. III., c. 15,)], and for offences committed against any other act or acts of Parliament relating to the trade or revenues of the said colonies or plantations; shall and may be prosecuted, sued for, and recovered, in any court of record, or in any court of admiralty, in the respective colony or plantation where the offence shall be committed, or in any court of vice admiralty appointed or to be appointed, and which shall have jurisdiction within such colony, plantation, or place, (which courts of admiralty or vice admiralty are hereby respectively authorized and required to proceed, hear, and determine the same) at the election of the informer or prosecutor.

LVIII. [Penalties and forfeitures incurred for offences against this act to be sued for and recovered as in Sec. LVII.]; and that from and after . . . [September 29, 1765] . . . , in all cases, where any suit or prosecution shall be commenced and determined for any penalty or forfeiture inflicted by this act, or by the said act made in the fourth year of his present Majesty's reign, or by any other act of parliament relating to the trade or revenues of the said colonies or plantations, in any court of admirality in the respective colony or plantation where the offence shall be committed, either party, who shall think himself aggrieved by such determination, may appeal from such determination to any court of vice admiralty appointed or to be appointed, and which shall

have jurisdiction within such colony, plantation, or place . . . ; and the forfeitures and penalties hereby inflicted, which shall be incurred in any other part of his Majesty's dominions, shall and may be prosecuted, sued for, and recovered, with full costs of suit, in any court of record within the kingdom, territory, or place, where the offence shall be committed, in such and the same manner as any debt or damage, to the amount of such forfeiture or penalty, can or may be sued for and recovered.

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No. 34. Quartering Act

April, 1765

FURTHER to carry into effect the plans of the ministry in reference to America, the annual Mutiny Act of 1765 authorized the dispatch to the colonies of such troops as might be deemed necessary. As it was anticipated that the number so sent would be greater than formerly, the Quartering Act was passed to provide for their accommodation. The provisions of the act were re-enacted in 1775 (15 Geo. III., c. 15), and made applicable to the naval forces while on shore.

REFERENCES. — *Text* in Pickering's *Statutes at Large*, XXVI., 305–318. The act is cited as 5 Geo. III., c. 33.

An act to amend and render more effectual, in his Majesty's dominions in America, *an act passed in this present session of parliament, intituled,* An act for punishing mutiny and desertion, and for the better payment of the army and their quarters.

WHEREAS . . . [by the Mutiny Act of 1765] . . . *several regulations are made and enacted for the better government of the army, and their observing strict discipline, and for providing quarters for the army, and carriages on marches and other necessary occasions, and inflicting penalties on offenders against the same act, and for many other good purposes therein mentioned; but the same may not be sufficient for the forces that may be employed in his Majesty's dominions in* America: *and whereas, during the continuance of the said act, there may be occasion for marching and quartering of regiments and companies of his Majesty's forces in several parts of his Majesty's dominions in* America: *and whereas the publick houses and barracks, in his Majesty's dominions in*

America, *may not be sufficient to supply quarters for such forces: and whereas it is expedient and necessary that carriages and other conveniences, upon the march of troops in his Majesty's dominions in* America, *should be supplied for that purpose:* be it enacted . . . , That for and during the continuance of this act, and no longer, it shall and may be lawful to and for the constables, tithingmen, magistrates, and other civil officers of villages, towns, townships, cities, districts, and other places, within his Majesty's dominions in *America*, and in their default or absence, for any one justice of the peace inhabiting in or near any such village, township, city, district or place, and for no others; and such constables . . . and other civil officers as aforesaid, are hereby required to billet and quarter the officers and soldiers, in his Majesty's service, in the barracks provided by the colonies; and if there shall not be sufficient room in the said barracks for the officers and soldiers, then and in such case only, to quarter and billet the residue . . . in inns, livery stables, ale-houses, victualling-houses, and the houses of sellers of wine by retail to be drank in their own houses or places thereunto belonging, and all houses of persons selling of rum, brandy, strong water, cyder or metheglin, by retail, to be drank in houses; and in case there shall not be sufficient room for the officers and soldiers in such barracks, inns, victualling and other publick ale-houses, that in such and no other case, and upon no other account, it shall and may be lawful for the governor and council of each respective province in his Majesty's dominions in *America*, to authorize and appoint, and they are hereby directed and impowered to authorize and appoint, such proper person or persons as they shall think fit, to take, hire and make fit, and, in default of the said governor and council appointing and authorizing such person or persons, or in default of such person or persons so appointed neglecting or refusing to do their duty, in that case it shall and may be lawful for any two or more of his Majesty's justices of the peace in or near the said villages, towns, townships, cities, districts, and other places, and they are hereby required to take, hire, and make fit for the reception of his Majesty's forces, such and so many uninhabited houses, outhouses, barns, or other buildings, as shall be necessary, to quarter therein the residue of such officers and soldiers for whom there should not be room in such barracks and publick houses as aforesaid . . .

II. And it is hereby declared and enacted, That there shall be no more billets at any time ordered, than there are effective soldiers present to be quartered therein: and in order that this service may be effectually provided for, the commander in chief in *America*, or other officer under whose orders any regiment or company shall march, shall, from time to time, give . . . as early notice as conveniently may be, in writing, signed by such commander or officer of their march, specifying their numbers and time of marching as near as may be, to the respective governors of each province through which they are to march . . .

III. [Military officers taking upon themselves to quarter soldiers contrary to this act, or using any menace to a civil officer to deter him from his duty, to be cashiered. Persons aggrieved by having soldiers quartered upon them may complain to justices of the peace, and be relieved.]

* * * * * * * *

V. Provided nevertheless, and it is hereby enacted, That the officers and soldiers so quartered and billeted as aforesaid (except such as shall be quartered in the barracks, and hired uninhabited houses, or other buildings as aforesaid) shall be received and furnished with diet, and small beer, cyder, or rum mixed with water, by the owners of the inns, livery stables, alehouses, victualling-houses, and other houses in which they are allowed to be quartered and billeted by this act; paying and allowing for the same the several rates herein after mentioned to be payable, out of the subsistence-money, for diet and small beer, cyder, or rum mixed with water.

VI. Provided always, That in case any innholder, or other person, on whom any non-commission officers or private men shall be quartered by virtue of this act, . . . (except on a march, or employed in recruiting, and likewise except the recruits by them raised, for the space of seven days at most, for such non-commission officers and soldiers who are recruiting, and recruits by them raised) shall be desirous to furnish such non-commission officers or soldiers with candles, vinegar, and salt, and with small beer or cyder, not exceeding five pints, or half a pint of rum mixed with a quart of water, for each man *per diem*, *gratis*, and allow to such non-commission officers or soldiers the use of fire, and the necessary u[n]tensils for dressing and eating their meat, and shall give

notice of such his desire to the commanding officer, and shall furnish and allow the same accordingly; then . . . the non-commission officers and soldiers so quartered shall provide their own victuals; and the officer to whom it belongs to receive, or that actually does receive, the pay and subsistence of such non-commission officers and soldiers, shall pay the several sums herein after-mentioned to be payable, out of the subsistence-money, for diet and small beer, to the non-commission officers and soldiers aforesaid . . .

VII. And whereas there are several barracks in several places in his Majesty's said dominions in *America*, or some of them, provided by the colonies, for the lodging and covering of soldiers in lieu of quarters, for the ease and conveniency as well of the inhabitants of and in such colonies, as of the soldiers; it is hereby further enacted, That all such officers and soldiers, so put and placed in such barracks, or in hired uninhabited houses, out-houses, barns, or other buildings, shall, from time to time, be furnished and supplied there by the persons to be authorized or appointed for that purpose by the governor and council of each respective province, or upon neglect or refusal of such governor and council in any province, then by two or more justices of the peace residing in or near such place, with fire, candles, vinegar, and salt, bedding, utensils for dressing their victuals, and small beer or cyder, not exceeding five pints, or half a pint of rum mixed with a quart of water, to each man, without paying any thing for the same.

VIII. [Persons taking or hiring uninhabited houses, &c., for troops, and furnishing supplies as aforesaid, to be reimbursed by the province.]

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XI. And be it further enacted . . . , That if any constable, tythingman, magistrate, or other chief officer or person whatsoever, who, by virtue or colour of this act, shall quarter or billet, or be employed in quartering or billeting, any officers or soldiers, within his Majesty's said dominions in *America*, shall neglect or refuse, for the space of two hours, to quarter or billet such officers or soldiers, when thereunto required, in such manner as is by this act directed, provided sufficient notice be given before the arrival of such forces; . . . or in case any victualler, or any other person . . . , liable by this act to have any officer or soldier

billeted or quartered on him or her, shall refuse to receive or victual any such officer or soldier . . . ; or in case any person or persons shall refuse to furnish or allow, according to the directions of this act, the several things herein before directed to be furnished or allowed to officers and soldiers, so quartered or billeted on him or her, or in the barracks, and hired uninhabited houses, out-houses, barns or other buildings, as aforesaid, at the rate herein after mentioned; and shall be thereof convicted before one of the magistrates of any one of the supreme chief or principal common law courts of the colony where such offence shall be committed, . . . [every such offender shall forfeit not less than forty shillings nor more than £5.]

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XV. And be if further enacted . . . , That for the better and more regular provision of carriages for his Majesty's forces in their marches, or for their arms, cloaths, or accoutrements, in his Majesty's said dominions in *America*, all justices of the peace within their several villages . . . [&c.] . . . and places, being duly required thereunto by an order from his Majesty, or the general of his forces, or of the general commanding, or the commanding officer there shall, as often as such order is brought and shewn unto one or more or them, by the quarter-master, adjutant, or other officer of the regiment, detachment, or company, so ordered to march, issue out his or their warrants to the constables . . . or other officers of the villages . . . and other places, from, through, near, or to which such regiment, detachment, or company, shall be ordered to march, requiring them to make such provision for carriages, with able men to drive the same, as shall be mentioned in the said warrant: allowing them reasonable time to do the same, that the neighbouring parts may not always bear the burthen: and in case sufficient carriages cannot be provided within any such village . . . or other place, then the next justice or justices of the peace of the village . . . or other place, shall, upon such order as aforesaid . . . , issue his or their warrants to the constables . . . or other officers, of such next village . . . or other place, for the purposes aforesaid, to make up such deficiency; and such constable . . . or other officer, shall order or appoint such person or persons, having carriages, within their respective villages . . . or other places, as they shall think proper, to provide

and furnish such carriages and men, according to the warrant aforesaid . . .

XVI. And be it further enacted, That the pay or hire for a *New York* waggon, carrying twelve hundred pounds gross weight, shall be seven pence sterling for each mile; and for every other carriage in that and every other colony . . . , in the same proportion; and at or after the same rate or price for what weight every such other carriage shall carry; and that the first day's pay or hire for every such carriage, shall be paid down by such officer to such constable . . . or other civil officer, who shall get or procure such carriages, for the use of the owner or owners thereof; and the pay or hire for every such carriage after the first day, shall be paid every day, from day to day, by such officer as aforesaid, into the hands of the driver or drivers of such carriages respectively, until such carriages shall be discharged from such service, for the use of the owner and owners thereof.

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XVIII. Provided also, That no such waggon, cart, or carriage, shall be obliged to travel more than one day's march, if, within that time, they shall arrive at any other place where other carriages may be procured; but, in case other sufficient carriages cannot be procured, then such carriages shall be obliged to continue in the service till they shall arrive at such village . . . or other place, where proper and sufficient carriages, for the service of the forces, may be procured.

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No. 35. Resolutions of the Stamp Act Congress

October 19, 1765

In a circular letter of June 8, 1765, the Massachusetts House of Representatives proposed to the other colonies the appointment of committees to meet at New York, in October, "to consult together on the present circumstances of the colonies, and the difficulties to which they are and must be reduced by the operation of the acts of parliament, for levying duties and taxes on the colonies; and to consider of a general and united, dutiful, loyal and humble representation of their condition to his majesty and to the parliament, and to

implore relief." The congress met October 7, delegates, variously appointed, being present from Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and South Carolina. Timothy Ruggles of Massachusetts was chosen chairman. On the 19th a "declaration of the rights and grievances of the colonists in America," originally drafted by John Dickinson, a delegate from Pennsylvania, was agreed to; on the 22d a petition to the King, also drawn by Dickinson, and a memorial and petition to the House of Lords, were approved, followed on the 23d by a petition to the Commons. After voting to recommend to the several colonies the appointment of special agents "for soliciting relief from their present grievances" in England, the congress adjourned. Ruggles did not assent to the declaration of the congress, and was later censured for his refusal by the Massachusetts House of Representatives. The petition to the Commons was presented in that body January 27, 1766, and, after some debate, was passed over without action.

REFERENCES. — *Text* in Almon's *Prior Documents*, 27, 28. The journal of the congress was printed in Niles's *Weekly Register*, II., 337–342, 353–355, and reprinted in Niles's *Principles and Acts of the Revolution*. Dickinson's draft is in his *Writings* (Ford's ed., 1895), I., 183–187. The best account of the congress is that of Frothingham, *Rise of the Republic*, chap. 5; see also two letters to Thomas McKean, in John Adams's *Works*, X., 60–63.

The members of this Congress, sincerely devoted, with the warmest sentiments of affection and duty to his Majesty's person and government, inviolably attached to the present happy establishment of the Protestant succession, and with minds deeply impressed by a sense of the present and impending misfortunes of the British colonies on this continent; having considered as maturely as time will permit, the circumstances of the said colonies, esteem it our indispensible duty to make the following declarations of our humble opinion, respecting the most essential rights and liberties of the colonists, and of the grievances under which they labour, by reason of several late acts of parliament.

I. That his Majesty's subjects in these colonies, owe the same allegiance to the crown of Great Britain, that is owing from his subjects born within the realm, and all due subordination to that august body the parliament of Great-Britain.

II. That his Majesty's liege subjects in these colonies, are intitled to all the inherent rights and liberties of his natural born subjects, within the kingdom of Great-Britain.

III. That it is inseparably essential to the freedom of a people, and the undoubted right of Englishmen, that no Taxes be imposed

on them but with their own consent, given personally, or by their representatives.

IV. That the people of these colonies are not, and, from their local circumstances, cannot be, represented in the House of Commons in Great-Britain.

V. That the only representatives of the people of these colonies are persons chosen therein by themselves, and that no taxes ever have been, or can be constitutionally imposed on them, but by their respective legislatures.

VI. That all supplies to the crown being free gifts of the people, it is unreasonable and inconsistent with the principles and spirit of the British constitution, for the people of Great-Britain to grant to his Majesty the property of the colonists.

VII. That trial by jury, is the inherent and invaluable right of every British subject in these colonies.

VIII. That . . . [the Stamp Act] . . . , by imposing taxes on the inhabitants of these colonies, and the said act, and several other acts, by extending the jurisdiction of the courts of admiralty beyond its ancient limits, have a manifest tendency to subvert the rights and liberties of the colonists.

IX. That the duties imposed by several late acts of parliament, from the peculiar circumstances of these colonies, will be extremely burthensome and grievous; and from the scarcity of specie, the payment of them absolutely impracticable.

X. That as the profits of the trade of these colonies ultimately center in Great-Britain, to pay for the manufactures which they are obliged to take from thence, they eventually contribute very largely to all supplies granted there to the crown.

XI. That the restrictions imposed by several late acts of parliament on the trade of these colonies, will render them unable to purchase the manufactures of Great-Britain.

XII. That the increase, prosperity and happiness of these colonies, depend on the full and free enjoyments of their rights and liberties, and an intercourse with Great-Britain mutually affectionate and advantageous.

XIII. That it is the right of the British subjects in these colonies to petition the king, or either house of parliament.

Lastly, That it is the indispensible duty of these colonies, to the best of sovereigns, to the mother country, and to themselves,

to endeavour by a loyal and dutiful address to his Majesty, and humble applications to both houses of parliament, to procure the repeal of the act for granting and applying certain stamp duties, of all clauses of any other acts of parliament, whereby the jurisdiction of the admiralty is extended as aforesaid, and of the other late acts for the restriction of American commerce.

No. 36. Declaratory Act

March 18, 1766

THE first legislative protest against the Stamp Act came from Virginia. May 30, 1765, the House of Burgesses adopted four resolutions, submitted by Patrick Henry, declaring that "The General Assembly of this colony, together with his Majesty or his substitutes, have, in their representative capacity, the only exclusive right and power to lay taxes and imposts upon the inhabitants of this colony; and that every attempt to vest such power in any other person or persons whatever than the General Assembly aforesaid, is illegal, unconstitutional, and unjust, and have [*has*] a manifest tendency to destroy British as well as American liberty." On the 8th of June, Massachusetts issued the call for the Stamp Act congress. The Rockingham ministry, which succeeded that of Grenville in July, was favorable to America; and Conway, the minister in charge of colonial affairs, was opposed to the policy of taxing the colonies without their consent. By November 1, the date on which the Stamp Act was to go into effect, the resolutions of assemblies and public meetings, and the intimidation and violence of the "Sons of Liberty" and others, had made the execution of the act impossible, even if stamps could have been had. A circular letter from Conway to the governors, dated October 24, urging them to do their utmost to maintain law and order, and authorizing them to call upon the military and naval commanders for assistance, if necessary, was unavailing. At the opening of Parliament, December 17, papers relating to affairs in America were submitted. Numerous petitions were also presented setting forth the losses which the Stamp Act had inflicted upon British trade. A resolution declaratory of the right of Parliament to tax the colonies, submitted February 3, was adopted by large majorities. On the 6th the Lords, by a vote of 59 to 54, resolved in favor of executing the Stamp Act; but a similar proposition in the Commons was rejected by a vote of more than two to one. On the 12th the King announced himself favorable to modification of the act; while the examination of Franklin before the House of Commons further strengthened the argument for repeal. The repeal bill and the declaratory bill passed the Commons March 4, and on the 7th the declaratory bill passed the Lords. The proposition to repeal the Stamp Act, however, encountered strong opposition in the Lords, where 33 members entered a pro

test against it at the second reading, and 28 at the third; but on the 17th the bill passed, and the next day both acts received the royal assent.

REFERENCES. — *Text* in Pickering's *Statutes at Large*, XXVII., 19, 20. The act is cited as 6 Geo. III., c. 12. The act of repeal is 6 Geo. III., c. 11. For the debates, see the *Parliamentary History*, XVI., and the *Annual Register* (1766). Franklin's examination is in his *Works* (Sparks's ed., IV., 161–198; Smyth's ed., IV., 412–448).

An act for the better securing the dependency of his Majesty's dominions in America *upon the crown and parliament of* Great Britain.

WHEREAS *several of the houses of representatives in his Majesty's colonies and plantations in* America, *have of late, against law, claimed to themselves, or to the general assemblies of the same, the sole and exclusive right of imposing duties and taxes upon his Majesty's subjects in the said colonies and plantations; and have, in pursuance of such claim, passed certain votes, resolutions, and orders, derogatory to the legislative authority of parliament, and inconsistent with the dependency of the said colonies and plantations upon the crown of* Great Britain: . . . be it declared . . . , That the said colonies and plantations in *America* have been, are, and of right ought to be, subordinate unto, and dependent upon the imperial crown and parliament of *Great Britain;* and that the King's majesty, by and with the advice and consent of the lords spiritual and temporal, and commons of *Great Britain*, in parliament assembled, had, hath, and of right ought to have, full power and authority to make laws and statutes of sufficient force and validity to bind the colonies and people of *America*, subjects of the crown of *Great Britain*, in all cases whatsoever.

II. And be it further declared . . . , That all resolutions, votes, orders, and proceedings, in any of the said colonies or plantations, whereby the power and authority of the parliament of *Great Britain*, to make laws and statutes as aforesaid, is denied, or drawn into question, are, and are hereby declared to be, utterly null and void to all intents and purposes whatsoever.

No. 37. Act suspending the New York Assembly

June 15, 1767

In a message to the New York House of Assembly, June 13, 1766, Governor Moore informed the House of the expected arrival of troops in the city, and recommended that provision be made for them in accordance with the late Quartering Act [No. 34]. On the 19th the House adopted five resolutions, reported by Philip Livingston, excusing themselves from compliance with the request, on the ground that the requisition was "of such a nature and tendency that, should it be granted, the expence might, and probably would, very soon exceed the ability of this colony to pay, as the number of troops that may from time to time require the like provision, are . . . entirely unknown, and the articles required for the greatest part . . . unprecedented;" but the House intimated, at the same time, that a balance of £3990 in the treasury of the province, subject to the order of the commander-in-chief of the forces in America, might be used for the purpose in question. On an inquiry from the governor as to the precise use to which the money referred to was to be put, the assembly again, June 23, pleaded the small resources of the colony, but recommended that provision be made "for furnishing the barracks in the cities of New York and Albany, with beds, bedding, fire-wood, candles, and utensils for dressing of victuals for two battalions, not exceeding five hundred men each, and one company of artillery for one year"; and that the money beforementioned be drawn upon for the purpose. A bill to this effect was accordingly brought in and passed, and July 3 received the assent of the governor. A report of the action of the assembly having been made to the Board of Trade, the Earl of Shelburne, in a letter of August 6 to Governor Moore, expressed the hope that the requirements of the Quartering Act would be fully complied with. To this letter, communicated to the assembly in November, the House replied that New York had already assumed a heavier financial burden in the matter of supporting troops than any other colony, and that, since the act appeared to them designed for the needs of soldiers on the march, and not of such as might be stationed in the province for a whole year, they could not "put it in the power of any person" to lay upon them such a "ruinous and unsupportable" expense. December 19 the assembly was prorogued until the following March. May 15, 1767, the committee of the House of Commons to whom the matter had been referred, recommended the suspension of the assembly until the terms of the Quartering Act were complied with; and June 15 a bill embodying the recommendations received the royal assent. The assembly continuing obstinate, it was dissolved. The newly elected House also refused compliance, and was likewise dissolved. A third, in 1769, made the required provision.

References. — *Text* in Pickering's *Statutes at Large*, XXVII., 609, 610

The act is cited as 7 Geo. III., c. 59. Extracts from the proceedings of the New York legislature are in Almon's *Prior Documents*.

An act for restraining and prohibiting the governor, council, and house of representatives, of the province of New York, *until provision shall have been made for furnishing the King's troops with all the necessaries required by law, from passing or assenting to any act of assembly, vote, or resolution, for any other purpose.*

[The preamble recites the passage of the Mutiny or Quartering Act of 1765, continued by subsequent reënactments to March 24, 1769; the refusal of the New York house of representatives to comply with the act of 1765, and its tender of quarters and supplies "inconsistent with the provisions, and in opposition to the directions," of the said act, and continues:] In order therefore to enforce, within the said province of *New York*, the supplying of his Majesty's troops with the necessaries and in the manner required by the said acts of parliament; . . . be it enacted . . . , That from and after . . . [October 1, 1767,] . . . until provision shall have been made by the said assembly of *New York* for furnishing his Majesty's troops within the said province with all such necessaries as are required by the said acts of parliament, or any of them, to be furnished for such troops, it shall not be lawful for the governor, lieutenant governor, or person presiding or acting as governor or commander in chief, or for the council for the time being, within the colony, plantation, or province, of *New York* in *America*, to pass, or give his or their assent to, or concurrence in, the making or passing of any act of assembly; or his or their assent to any order, resolution, or vote, in concurrence with the house of representatives for the time being within the said colony, plantation, or province; or for the said house of representatives to pass or make any bill, order, resolution, or vote, (orders, resolutions, or votes, for adjourning such house only, excepted) of any kind, for any other purpose whatsoever; and that all acts of assembly, orders, resolutions, and votes whatsoever, which shall or may be passed, assented to, or made, contrary to the tenor and meaning of this act, after . . . [October 1, 1767,] . . . within the said colony, plantation, or province, . . . shall be, and are hereby declared to be, null and void, and of no force or effect whatsoever.

No. 38. Townshend Revenue Act

June 29, 1767

In August, 1776, Pitt, now Earl of Chatham, succeeded Rockingham as prime minister; but illness soon incapacitated him for active participation in affairs, and the leadership fell to Townshend, chancellor of the exchequer. The irritation over the repeal of the Stamp Act was increased by the reports of continued agitation in America; while the reduction of the land tax from 4*s.* to 3*s.* in the pound, brought about by factious opposition to the ministry, necessitated revenue from some other source. "On January 26, 1767, in a debate on the army, George Grenville moved that America, like Ireland, should support an establishment of her own; and in the course of the discussion which followed, Townshend took occasion to declare himself a firm advocate of the principle of the Stamp Act." The plans for carrying his policy into effect were brought forward by Townshend in May, and embraced three points: the enforcement of existing laws, the appointment of customs commissioners, and provision for adequate revenue. The strong opposition in the colonies to the Sugar Act had led, in 1766, to the repeal of the duties imposed by that act, except the duty on tea (6 Geo. III., c. 52). In framing the revenue act of 1767, Townshend professed to observe the distinction urged in America between external and internal taxation, and to provide a revenue by means of import duties only. The proceeds of the duties, estimated at about £40,000, were to be applied towards the civil and military expenses of the colonies. Further to insure the observance of the act, writs of assistance were legalized. On the 4th of September Townshend died, and the execution of the act, which had not yet gone into operation, devolved upon his successors. The duties imposed by the act, with the exception of the duty on tea, were repealed by an act of April 12, 1770.

References. — *Text* in Pickering's *Statutes at Large*, XXVII., 505–512. The act is cited as 7 Geo. III., c. 46. For the debates and proceedings see the *Parliamentary History*, XVI. Summaries of the debates, reflecting as usual public opinion in England, are in the *Annual Register* (1767). Of contemporary discussions in America, Dickinson's *Letters from a Farmer* (*Writings*, Ford's ed., I., 305–406) is the most important. The acts establishing customs commissioners in America (7 Geo. III., c. 41) and imposing duties on tea (7 Geo. III., c. 56), the other parts of Townshend's scheme, are in MacDonald's *Select Charters*, Nos. 62 and 64. The act of repeal is 10 Geo. III., c. 17.

An act for granting certain duties in the British *colonies and plantations in* America; *for allowing a drawback of the duties of customs upon the exportation, from this kingdom, of coffee and cocoa nuts of the produce of the said colonies or plantations; for discontinuing the drawbacks payable on china earthen ware*

exported to America; *and for more effectually preventing the clandestine running of goods in the said colonies and plantations.*

WHEREAS *it is expedient that a revenue should be raised, in your Majesty's dominions in* America, *for making a more certain and adequate provision for defraying the charge of the administration of justice, and the support of civil government, in such provinces where it shall be found necessary; and towards further defraying the expences of defending, protecting, and securing the said dominions;* . . . be it enacted . . . , That from and after . . . [November 20, 1767,] . . . there shall be raised, levied, collected, and paid, unto his Majesty, his heirs, and successors, for and upon the respective Goods herein after mentioned, which shall be imported from *Great Britain* into any colony or plantation in *America* which now is, or hereafter may be, under the dominion of his Majesty . . . , the several Rates and Duties following; that is to say,

For every hundred weight avoirdupois of crown, plate, flint, and white glass, four shillings and eight pence.

For every hundred weight avoirdupois of green glass, one shilling and two pence.

For every hundred weight avoirdupois of red lead, two shillings.

For every hundred weight avoirdupois of white lead, two shillings.

For every hundred weight avoirdupois of painters colours, two shillings.

For every pound weight avoirdupois of tea, three pence.

For every ream of paper, usually called or known by the name of *Atlas fine*, twelve shillings.

[Then follow specifications of duties on sixty-six grades or classes of paper.]

* * * * * * * *

IV. . . . and that all the monies that shall arise by the said duties (except the necessary charges of raising, collecting, levying, recovering, answering, paying, and accounting for the same) shall be applied, in the first place, in such manner as is herein after mentioned, in making a more certain and adequate provision for the charge of the administration of justice, and the

support of civil government, in such of the said colonies and plantations where it shall be found necessary; and that the residue of such duties shall be paid into the receipt of his Majesty's exchequer, and shall be entered separate and apart from all other monies paid or payable to his Majesty . . . ; and shall be there reserved, to be from time to time disposed of by parliament towards defraying the necessary expences of defending, protecting, and securing, the *British* colonies and plantations in *America*.

* * * * * * * *

VI. *And whereas the allowing a drawback of all the duties of customs upon the exportation, from this kingdom, of coffee and cocoa nuts, the growth of the* British *dominions in* America, *may be a means of encouraging the growth of coffee and cocoa in the said dominions;* be it therefore enacted . . . , That from and after . . . [November 20, 1767] . . . , upon the exportation of any coffee or cocoa nuts, of the growth or produce of any *British* colony or plantation in *America*, from this kingdom as merchandize, the whole duties of customs, payable upon the importation of such coffee or cocoa nuts, shall be drawn back and repaid; in such manner, and under such rules, regulations, penalties, and forfeitures, as any drawback or allowance, payable out of the duties of customs upon the exportation of such coffee or cocoa nuts, was, could, or might be paid, before the passing of this act. . . .

VII. And it is hereby further enacted . . . , That no drawback shall be allowed for any china earthen ware sold, after the passing of this act, at the sale of the united company of merchants of *England* trading to the *East Indies*, which shall be entered for exportation from *Great Britain* to any part of America. . . .

* * * * * * * *

X. *And whereas by* . . . [the explanatory Navigation Act of 1662] . . . *and several other acts now in force, it is lawful for any officer of his Majesty's customs, authorized by writ of assistance under the seal of his Majesty's court of exchequer, to take a constable, headborough, or other publick officer inhabiting near unto the place, and in the day-time to enter and go into any house, shop, cellar, warehouse, or room or other place, and, in case of resistance, to break open doors, chests, trunks, and other package there, to seize, and from thence to bring, any kind of goods or merchandize whatsoever*

prohibited or uncustomed, and to put and secure the same in his Majesty's store-house next to the place where such seizure shall be made: and whereas by . . . [the Navigation Act of 1696] *. . . it is, amongst other things, enacted, that the officers for collecting and managing his Majesty's revenue, and inspecting the plantation trade, in* America, *shall have the same powers and authorities to enter houses or warehouses, to search for and seize goods prohibited to be imported or exported into or out of any of the said plantations, or for which any duties are payable, or ought to have been paid; and that the like assistance shall be given to the said officers in the execution of their office, as, by the said recited act of the fourteenth year of King* Charles *the Second, is provided for the officers in* England: *but, no authority being expressly given by the said act . . . of King* William *the third, to any particular court to grant such writs of assistance for the officers of the customs in the said plantations, it is doubted whether such officers can legally enter houses and other places on land, to search for and seize goods, in the manner directed by the said recited acts:* To obviate which doubts for the future, and in order to carry the intention of the said recited acts into effectual execution, be it enacted . . . , That from and after . . . [November 20, 1767,] . . . such writs of assistance, to authorize and impower the officers of his Majesty's customs to enter and go into any house . . . or other place, in the *British* colonies or plantations in *America*, to search for and seize prohibited or uncustomed goods . . . , shall and may be granted by the said superior or supreme court of justice having jurisdiction within such colony or plantation respectively.

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No. 39. Massachusetts Circular Letter

February 11, 1768

The General Court of Massachusetts met Dec. 30, 1767. The address of Governor Bernard dealt with the question of the boundaries between Massachusetts and New York and New Hampshire and Maine, and did not mention the Townshend acts. The acts were, however, read in the House, and the consideration of them referred to a committee of nine on the state of the province. On the 12th of January the committee reported a draft of a letter

to Dennis De Berdt, agent of the colony in England, reviewing the arguments against taxation by Great Britain, and protesting against the recent acts as unjust and unwarranted. Subsequently a petition to the King, and letters to Shelburne, Rockingham, Camden, Chatham, Conway, and the Commissioners of the Treasury, were adopted. On the 21st of January a motion "to appoint a time to consider the expediency of writing to the assemblies of the other colonies on this continent, with respect to the importance of their joining with them in petitioning his Majesty at this time," was rejected; but on Feb. 4 the motion was reconsidered, and a committee appointed "to prepare a letter to be sent to each of the Houses of Representatives and Burgesses on the continent, to inform them of the measures which this House has taken with regard to the difficulties arising from the acts of Parliament for levying duties and taxes on the American colonists." The letter, drawn up by Samuel Adams, was reported on the 11th and adopted. The letter was laid before the cabinet April 15, by Lord Hillsborough, secretary of state for the colonies. A letter from Hillsborough to the governors of the several colonies, April 21, called upon them to exert their "utmost influence" to prevent the various assemblies from taking action on the Massachusetts circular; while a communication to Governor Bernard, of the following day, instructed him to require the assembly to rescind the resolution under which the circular letter was issued, and, in case of refusal, to dissolve them. On the 30th of June, after adopting a letter to Hillsborough defending their action, the House by a vote of 92 to 17, refused to rescind. The next day the General Court was dissolved.

REFERENCES. — *Text* in Bradford's *Massachusetts State Papers*, 134–136; the same work gives the other Massachusetts letters and documents referred to above. Almon's *Prior Documents*, 220, gives Hillsborough's letter to the governors; 203–205, extracts from the letter to Bernard; 213–218, replies of other colonies to the circular letter.

Province of Massachusetts Bay, February 11, 1768.

SIR,

The House of Representatives of this province, have taken into their serious consideration, the great difficulties that must accrue to themselves and their constituents, by the operation of several acts of Parliament, imposing duties and taxes on the American colonies.

As it is a subject in which every colony is deeply interested, they have no reason to doubt but your House is deeply impressed with its importance, and that such constitutional measures will be come into, as are proper. It seems to be necessary, that all possible care should be taken, that the representatives of the several assemblies, upon so delicate a point, should harmonize with each other. The House, therefore, hope that this letter will

be candidly considered in no other light then as expressing a disposition freely to communicate their mind to a sister colony, upon a common concern, in the same manner as they would be glad to receive the sentiments of your or any other House of Assembly on the continent.

The House have humbly represented to the ministry, their own sentiments, that his Majesty's high court of Parliament is the supreme legislative power over the whole empire; that in all free states the constitution is fixed, and as the supreme legislative derives its power and authority from the constitution, it cannot overleap the bounds of it, without destroying its own foundation; that the constitution ascertains and limits both sovereignty and allegiance, and, therefore, his Majesty's American subjects, who acknowledge themselves bound by the ties of allegiance, have an equitable claim to the full enjoyment of the fundamental rules of the British constitution; that it is an essential, unalterable right, in nature, engrafted into the British constitution, as a fundamental law, and ever held sacred and irrevocable by the subjects within the realm, that what a man has honestly acquired is absolutely his own, which he may freely give, but cannot be taken from him without his consent; that the American subjects may, therefore, exclusive of any consideration of charter rights, with a decent firmness, adapted to the character of free men and subjects, assert this natural and constitutional right.

It is, moreover, their humble opinion, which they express with the greatest deference to the wisdom of the Parliament, that the acts made there, imposing duties on the people of this province, with the sole and express purpose of raising a revenue, are infringements of their natural and constitutional rights; because, as they are not represented in the British Parliament, his Majesty's Commons in Britain, by those acts, grant their property without their consent.

This House further are of opinion, that their constituents, considering their local circumstances, cannot, by any possibility, be represented in the Parliament; and that it will forever be impracticable, that they should be equally represented there, and consequently, not at all; being separated by an ocean of a thousand leagues. That his Majesty's royal predecessors, for this reason, were graciously pleased to form a subordinate legislature

here, that their subjects might enjoy the unalienable right of a representation: also, that considering the utter impracticability of their ever being fully and equally represented in Parliament, and the great expense that must unavoidably attend even a partial representation there, this House think that a taxation of their constituents, even without their consent, grievous as it is, would be preferable to any representation that could be admitted for them there.

Upon these principles, and also considering that were the right in Parliament ever so clear, yet, for obvious reasons, it would be beyond the rules of equity that their constituents should be taxed, on the manufactures of Great Britain here, in addition to the duties they pay for them in England, and other advantages arising to Great Britain, from the acts of trade, this House have preferred a humble, dutiful, and loyal petition, to our most gracious sovereign, and made such representations to his Majesty's ministers, as they apprehended would tend to obtain redress.

They have also submitted to consideration, whether any people can be said to enjoy any degree of freedom, if the Crown, in addition to its undoubted authority of constituting a Governor, should appoint him such a stipend as it may judge proper, without the consent of the people, and at their expense; and whether, while the judges of the land, and other civil officers, hold not their commissions during good behaviour, their having salaries appointed for them by the Crown, independent of the people, hath not a tendency to subvert the principles of equity, and endanger the happiness and security of the subject.

In addition to these measures, the House have written a letter to their agent, which he is directed to lay before the ministry; wherein they take notice of the hardships of the act for preventing mutiny and desertion, which requires the Governor and Council to provide enumerated articles for the King's marching troops, and the people to pay the expenses; and also, the commission of the gentlemen appointed commissioners of the customs, to reside in America, which authorizes them to make as many appointments as they think fit, and to pay the appointees what sum they please, for whose mal-conduct they are not accountable; from whence it may happen, that officers of the Crown may be multiplied to such a degree as to become dangerous to

the liberty of the people, by virtue of a commission, which does not appear to this House to derive any such advantages to trade as many have supposed.

These are the sentiments and proceedings of this House; and as they have too much reason to believe that the enemies of the colonies have represented them to his Majesty's ministers, and to the Parliament, as factious, disloyal, and having a disposition to make themselves independent of the mother country, they have taken occasion, in the most humble terms, to assure his Majesty, and his ministers, that, with regard to the people of this province, and, as they doubt not, of all the colonies, the charge is unjust. The House is fully satisfied, that your Assembly is too generous and liberal in sentiment, to believe that this letter proceeds from an ambition of taking the lead, or dictating to the other assemblies. They freely submit their opinions to the judgment of others; and shall take it kind in your House to point out to them any thing further, that may be thought necessary.

This House cannot conclude, without expressing their firm confidence in the King, our common head and father; that the united and dutiful supplications of his distressed American subjects, will meet with his royal and favorable acceptance.

No. 40. Boston Port Act

March 31, 1774

By the Townshend Revenue Act [No. 38], a duty of 3*d*. per pound was imposed upon tea imported into the American colonies from Great Britain; but by the Tea Act of the same year the inland duty of 1*s*. per pound was taken off for five years, and a drawback allowed, on tea exported to America, of the entire customs duty payable on its importation into England. The duties imposed by the Revenue Act, except that on tea, were repealed in 1770. But the colonies would not buy tea shipped from England, and most of the tea consumed in America was smuggled in through the agency of the Dutch East India Company. To relieve the British East India Company from certain financial difficulties, an act was passed in May, 1773, again allowing a drawback of the duties payable on importation into England, in case the tea was shipped to America; the tax of 3*d*. per pound, however, still remaining as an assertion of the principle of the Declaratory Act of 1766 [No. 36]. Upon the passage of the act of 1773, large quantities of tea were sent to America, but

the importation was generally resisted. The most violent opposition was manifested in Boston, where, on the night of Dec. 16, the ships laden with tea were boarded by citizens disguised as Indians, and the tea thrown into the harbor.

Papers relating to the disturbances in America, and especially the proceedings at Boston, were laid before Parliament March 7, 1774, accompanied by a royal message urging the adoption of measures to end the disorder and secure obedience to the laws. On the 14th Lord North, in the House of Commons, asked and obtained leave to bring in a bill to remove the custom house officers from Boston, and to close that port to commerce. A petition from William Bollan, agent for Massachusetts, praying to be heard in behalf of that colony, was laid on the table. The bill was brought in on the 18th, had its second reading on the 21st, and passed on the 25th without a division. It was taken up to the Lords the following day, and passed that House, without a division, on the 30th. March 31 the act received the royal assent. The petition of Bollan was finally rejected by the Commons on the 25th, by a vote of 40 to 170; but he was heard in the Lords on the 30th, before the final vote on the bill. The act was repealed by the prohibitory act of Dec. 22, 1775.

References. — *Text* in Pickering's *Statutes at Large*, XXX., 336–341. The act is cited as 14 Geo. III., c. 19. For the debates in Parliament, see the *Parliamentary History*, XVII., or Force's *American Archives*, Fourth Series, I., 5–61; *cf.* also the *Annual Register* (1774). The report of the committee of the Lords on the disturbances in Massachusetts is in Force, and also in Almon's *Prior Documents*, 232–255. Franklin's *True State of the Proceedings*, etc. (*Works*, Sparks's ed., IV., 466–515), is a skilful counter-presentation.

An act to discontinue, in such manner, and for such time as are therein mentioned, the landing and discharging, lading or shipping, of goods, wares, and merchandise, at the town, and within the harbour, of Boston, *in the province of* Massachuset's Bay, *in* North America.

WHEREAS *dangerous commotions and insurrections have been fomented and raised in the town of* Boston, *in the province of* Massachuset's Bay, *in* New England, *by divers ill-affected persons, to the subversion of his Majesty's government, and to the utter destruction of the publick peace, and good order of the said town; in which commotions and insurrections certain valuable cargoes of teas, being the property of the* East India Company, *and on board certain vessels lying within the bay or harbour of* Boston, *were seized and destroyed: And whereas, in the present condition of the said town and harbour, the commerce of his Majesty's subjects cannot be safely carried on there, nor the customs payable to his*

Majesty duly collected; and it is therefore expedient that the officers of his Majesty's customs should be forthwith removed from the said town: . . . be it enacted . . . , That from and after . . . [June 1, 1774,] . . . it shall not be lawful for any person or persons whatsoever to lade, put, or cause or procure to be laden or put, off or from any quay, wharf, or other place, within the said town of *Boston*, or in or upon any part of the shore of the bay, commonly called *The Harbour of Boston*, between a certain headland or point called *Nahant Point*, on the eastern side of the entrance into the said bay, and a certain other headland or point called *Alderton Point*, on the western side of the entrance into the said bay, or in or upon any island, creek, landing-place, bank, or other place, within the said bay or headlands, into any ship, vessel, lighter, boat, or bottom, any goods, wares, or merchandise whatsoever, to be transported or carried into any other country, province, or place whatsoever, or into any other part of the said province of the *Massachuset's Bay*, in *New England;* or to take up, discharge, or lay on land, or cause or procure to be taken up, discharged, or laid on land, within the said town, or in or upon any of the places aforesaid, out of any boat, lighter, ship, vessel, or bottom, any goods, wares, or merchandise whatsoever, to be brought from any other country, province, or place, or any other part of the said province of the *Massachuset's Bay* in *New England*, upon pain of the forfeiture of the said goods, wares, and merchandise, and of the said boat, lighter, ship, vessel, or other bottom into which the same shall be put, or out of which the same shall be taken, and of the guns, ammunition, tackle, furniture, and stores, in or belonging to the same: And if any such goods, wares, or merchandise, shall, within the said town, or in any the places aforesaid, be laden or taken in from the shore into any barge, hoy, lighter, wherry, or boat, to be carried on board any ship or vessel outward-bound to any other country or province, or other part of the said province of the *Massachuset's Bay* in *New England*, or be laden or taken into such barge, hoy, lighter, wherry, or boat, from or out of any ship or vessel coming in and arriving from any other country or province, or other part of the said province of the *Massachuset's Bay* in *New England*, such barge, hoy, lighter, wherry, or boat, shall be forfeited and lost.

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III. And be it further enacted . . . , That if any ship or vessel shall be moored or lie at anchor, or be seen hovering within the said bay, described and bounded as aforesaid, or within one league from the said bay so described, or the said headlands, or any of the islands lying between or within the same, it shall and may be lawful for any admiral, chief commander, or commissioned officer, of his Majesty's fleet or ships of war, or for any officer of his Majesty's customs, to compel such ship or vessel to depart to some other port or harbour, or to such station as the said officer shall appoint, and to use such force for that purpose as shall be found necessary: And if such ship or vessel shall not depart accordingly, within six hours after notice for that purpose given by such person as aforesaid, such ship or vessel, together with all the goods laden on board thereon, and all the guns, ammunition, tackle, and furniture, shall be forfeited and lost, whether bulk shall have been broken or not.

IV. Provided always, That nothing in this act contained shall extend, or be construed to extend, to any military or other stores for his Majesty's use, or to the ships or vessels whereon the same shall be laden . . . ; nor to any fuel or victual brought coastwise from any part of the continent of *America*, for the necessary use and sustenance of the inhabitants of the said town of *Boston*, provided the vessel wherein the same are to be carried shall be duly furnished with a cocket and let-pass, after having been duly searched by the proper officers of his Majesty's customs at *Marblehead*, in the port of *Salem*, in the said province of *Massachuset's Bay* . . . ; nor to any ships or vessels which may happen to be within the said harbour of *Boston* on or before . . . [June 1, 1774,] . . . and may have either laden or taken on board, or be there with intent to load or take on board, or to land or discharge any goods, wares, and merchandise, provided the said ships and vessels do depart the said harbour within fourteen days after the said . . . [June 1, 1774]. . . .

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VIII. And be it further enacted . . . , That whenever it shall be made to appear to his Majesty, in his privy council, that peace and obedience to the laws shall be so far restored in the said town of *Boston*, that the trade of *Great Britain* may safely be carried on there, and his Majesty's customs duly collected, and his Majesty.

in his privy council, shall adjudge the same to be true, it shall and may be lawful for his Majesty, by proclamation, or order of council, to assign and appoint the extent, bounds, and limits, of the port or harbour of *Boston*, and of every creek or haven within the same, or in the islands within the precincts thereof; and also to assign and appoint such and so many open places, quays, and wharfs, within the said harbour, creeks, havens, and islands, for the landing, discharging, lading, and shipping of goods, as his Majesty . . . shall judge necessary and expedient; and also to appoint such and so many officers of the customs therein as his Majesty shall think fit; after which it shall be lawful for any person or persons to lade or put off from, or to discharge and land upon, such wharfs, quays, and places, so appointed within the said harbour, and none other, any goods, wares, and merchandise whatever.

* * * * * * * *

X. Provided also, and it is hereby declared and enacted, That nothing herein contained shall extend, or be construed, to enable his Majesty to appoint such port, harbour, creeks, quays, wharfs, places, or officers, in the said town of *Boston*, or in the said bay or islands, until it shall sufficiently appear to his Majesty that full satisfaction hath been made by or on behalf of the inhabitants of the said town of *Boston* to the united company of merchants of *England* trading to the *East Indies*, for the damage sustained by the said company by the destruction of their goods sent to the said town of *Boston*, on board certain ships or vessels as aforesaid; and until it shall be certified to his Majesty, in council, by the governor, or lieutenant governor, of the said province, that reasonable satisfaction hath been made to the officers of his Majesty's revenue, and others, who suffered by the riots and insurrections above mentioned, in the months of *November* and *December*, in the year one thousand seven hundred and seventy-three, and in the month of *January*, in the year one thousand seven hundred and seventy-four.

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No. 41. Massachusetts Government Act

May 20, 1774

MARCH 28, 1774, Lord North moved in the House of Commons for leave to bring in a bill "for the better regulating the government of the Province of Massachusetts Bay." Leave was given, and April 15 the bill was presented. The bill had its second reading on the 22d, and May 2, after spirited debate, was ordered to its third reading by a vote of 239 to 64, and passed. A petition from Bollan, April 28, for delay until he could hear from Massachusetts, was refused, the vote being 32 to 95. The bill had its second reading in the Lords May 6; on the 11th, by a vote of 92 to 20, the third reading was ordered, and the bill, with some amendments, passed. Eleven Lords entered a protest against the bill. On the 13th the Commons agreed to the amendments of the Lords, and on the 20th the act received the royal assent.

REFERENCES. — *Text* in Pickering's *Statutes at Large*, XXX., 381–390. The act is cited as 14 Geo. III., c. 45. For the debates, see the *Parliamentary History*, XVII., or Force's *American Archives*, Fourth Series, I., 66–104; see also the *Annual Register* (1774).

An act for the better regulating the government of the province of the Massachuset's Bay, *in* New England.

[The act recites the provision of the charter regarding the election of councillors, and continues:]

And whereas the said method of electing such counsellors or assistants, to be vested with the several powers, authorities, and privileges, therein mentioned, although conformable to the practice theretofore used in such of the colonies thereby united, in which the appointment of the respective governors had been vested in the general courts or assemblies of the said colonies, hath, by repeated experience, been found to be extremely ill adapted to the plan of government established in the province of the Massachuset's Bay . . . , *and hath been so far from contributing to the attainment of the good ends and purposes thereby intended, and to the promoting of the internal welfare, peace, and good government, of the said province, or to the maintenance of the just subordination to, and conformity with, the laws of* Great Britain, *that the manner of exercising the powers, authorities, and privileges aforesaid, by the persons so annually elected, hath, for some time past, been such as had the most manifest tendency to obstruct, and, in great measure, defeat, the execution of the laws; to weaken the attachment of his Majesty's well-disposed*

subjects in the said province to his Majesty's government, and to encourage the ill-disposed among them to proceed even to acts of direct resistance to, and defiance of, his Majesty's authority: And it hath accordingly happened, that an open resistance to the execution of the laws hath actually taken place in the town of Boston, *and the neighbourhood thereof, within the said Province: And whereas it is, under these circumstances, become absolutely necessary, in order to the preservation of the peace and good order of the said province, the protection of his Majesty's well-disposed subjects therein resident, the continuance of the mutual benefits arising from the commerce and correspondence between this kingdom and the said province, and the maintaining of the just dependence of the said province upon the crown and parliament of* Great Britain, *that the said method of annually electing the counsellors or assistants of the said Province should no longer be suffered to continue, but that the appointment of the said counsellors or assistants should henceforth be put upon the like footing as is established in such other of his Majesty's colonies or plantations in* America, *the governors whereof are appointed by his Majesty's commission, under the great seal of* Great Britain: Be it therefore enacted . . . , that from and after . . . [August 1, 1774,] . . . so much of the charter . . . [of 1691] . . . and all and every clause, matter, and thing, therein contained, which relates to the time and manner of electing the assistants or counsellors for the said province, be revoked, and is hereby revoked and made void and of none effect; and that the offices of all counsellors and assistants, elected and appointed in pursuance thereof, shall from thenceforth cease and determine: And that, from and after the said . . . [August 1, 1774,] . . . the council, or court of assistants of the said province for the time being, shall be composed of such of the inhabitants or proprietors of lands within the same as shall be thereunto nominated and appointed by his Majesty . . . , from time to time, by warrant under his or their signet or sign manual, and with the advice of the privy council, agreeable to the practice now used in respect to the appointment of counsellors in such of his Majesty's other colonies in *America*, the governors whereof are appointed by commission under the great seal of *Great Britain:* provided, that the number of the said assistants or counsellors shall not, at any one time, exceed thirty-six, nor be less than twelve.

II. And it is hereby further enacted, That the said assistants or counsellors, so to be appointed as aforesaid, shall hold their offices respectively, for and during the pleasure of his Majesty . . . ; and shall have and enjoy all the powers, privileges, and immunities, at present held, exercised, and enjoyed, by the assistants or counsellors of the said province, constituted and elected, from time to time, under the said charter (except as herein-after excepted) . . .

III. And be it further enacted . . . , That from and after . . . [July 1, 1774,] . . . it shall and may be lawful for his Majesty's governor for the time being of the said province, or, in his absence, for the lieutenant-governor, to nominate and appoint, under the seal of the province, from time to time, and also to remove, without the consent of the council, all judges of the inferior courts of common pleas, commissioners of *Oyer* and *Terminer*, the attorney general, provosts, marshals, justices af the peace, and other officers to the council or courts of justice belonging; and that all . . . [the said officers] . . . , and other officers so appointed . . . shall and may have, hold, and exercise, their said offices, powers and authorities, as fully and completely, to all intents and purposes, as any judges of the inferior courts of common pleas, commissioners of *Oyer* and *Terminer*, attorney general, provosts, marshals, or other officers, have or might have done heretofore under the said letters patent . . .

IV. [Provided, that the foregoing shall not be construed to annul any commission granted prior to July 1, 1774.]

V. And be it further enacted . . . , That, from and after . . . [July 1, 1774] . . . , it shall and may be lawful for his Majesty's governor, or, in his absence, for the lieutenant-governor . . . , to nominate and appoint the sheriffs without the consent of the council, and to remove such sheriffs with such consent, and not otherwise.

VI. And be it further enacted . . . , That, upon every vacancy of the offices of chief justice and judges of the superior court of the said province, from and after . . . [July 1, 1774] . . . , the governor for the time being, or, in his absence, the lieutenant-governor, without the consent of the council, shall have full power and authority to nominate and appoint the persons to succeed to the said offices, who shall hold their commissions during the pleasure of his Majesty . . . ; and that neither the chief justice

or judges appointed before . . . [July 1, 1774] . . . , nor those who shall hereafter be appointed pursuant to this act, shall be removed, unless by the order of his Majesty. . . .

VII. *And whereas, by several acts of the general court, which have been from time to time enacted and passed within the said province, the freeholders and inhabitants of the several townships, districts, and precincts, qualified, as is therein expressed, are authorized to assemble together, annually, or occasionally, upon notice given, in such manner as the said acts direct, for the choice of selectmen, constables, and other officers, and for the making and agreeing upon such necessary rules, orders, and bye-laws, for the directing, managing, and ordering, the prudential affairs of such townships, districts, and precincts, and for other purposes: and whereas a great abuse has been made of the power of calling such meetings, and the inhabitants have, contrary to the design of their institution, been misled to treat upon matters of the most general concern, and to pass many dangerous and unwarrantable resolves:* for remedy whereof, be it enacted, that from and after . . . [August 1, 1774,] . . . no meeting shall be called by the select men, or at the request of any number of freeholders of any township, district, or precinct, without the leave of the governor, or, in his absence, of the lieutenant-governor, in writing, expressing the special business of the said meeting, first had and obtained, except the annual meeting in the months of *March* or *May*, for the choice of select men, constables, and other officers, or except for the choice of persons to fill up the offices aforesaid, on the death or removal of any of the persons first elected to such offices, and also, except any meeting for the election of a representative or representatives in the general court; and that no other matter shall be treated of at such meetings, except the election of their aforesaid officers or representatives, nor at any other meeting, except the business expressed in the leave given by the governor, or, in his absence, by the lieutenant-governor.

VIII. *And whereas the method at present used in the province of* Massachuset's Bay, *in* America, *of electing persons to serve on grand juries, and other juries, by the freeholders and inhabitants of the several towns, affords occasion for many evil practices, and tends to pervert the free and impartial administration of justice:* for remedy whereof, be it further enacted . . . , That from and after the respective times appointed for the holding of the general

sessions of the peace in the several counties within the said province, next after . . . [September, 1774,] . . . the jurors to serve at the superior courts of judicature, courts of assize, general gaol delivery, general sessions of the peace, and inferior court of common pleas, in the several counties within the said province, shall not be elected, nominated, or appointed, by the freeholders and inhabitants of the several towns within the said respective counties, nor summoned or returned by the constables of the said towns; but that, from thenceforth, the jurors to serve at . . . [the said courts] . . . shall be summoned and returned by the sheriffs of the respective counties within the said province . . .

No. 42. Administration of Justice Act

May 20, 1774

APRIL 15, 1774, the bill for regulating the government of Massachusetts having been presented in the House of Commons, Lord North moved for leave to bring in, "as the last measure that Parliament will take," a bill "for the impartial administration of justice, in the cases of persons questioned for any acts done by them in the execution of the laws, or for the suppression of the riots and tumults," in the Massachusetts colony. Leave being given, the bill was brought in on the 21st, had its second reading on the 25th, and May 6 passed, by a vote of 127 to 24. On the 9th it was carried up to the Lords, where it was read a second time on the 13th, and on the 18th passed, the vote being 43 to 12. Eight members of the Lords entered a protest against the bill. May 20 the act received the royal assent. Throughout the debate the attendance in each house was small.

REFERENCES. — *Text* in Pickering's *Statutes at Large*, XXX., 367–371. The act is cited as 14 Geo. III., c. 39. The debates are in the *Parliamentary History*, XVII., and Force's *American Archives*, Fourth Series, I., 111–129; see also the *Annual Register* (1774).

An act for the impartial administration of justice in the cases of persons questioned for any acts done by them in the execution of the law, or for the suppression of riots and tumults, in the province of the Massachuset's Bay, *in* New England.

WHEREAS *in his Majesty's province of* Massachuset's Bay, *in* New England, *an attempt hath lately been made to throw off the authority of the parliament of* Great Britain *over the said province*

and an actual and avowed resistance, by open force, to the execution of certain acts of parliament, hath been suffered to take place, uncontrouled and unpunished, in defiance of his Majesty's authority, and to the utter subversion of all lawful government: and whereas, in the present disordered state of the said province, it is of the utmost importance to the general welfare thereof, and to the re-establishment of lawful authority throughout the same, that neither the magistrates acting in support of the laws, nor any of his Majesty's subjects aiding and assisting them therein, or in the suppression of riots and tumults, raised in opposition to the execution of the laws and statutes of this realm, should be discouraged from the proper discharge of their duty, by an apprehension, that in case of their being questioned for any acts done therein, they may be liable to be brought to trial for the same before persons who do not acknowledge the validity of the laws, in the execution thereof, or the authority of the magistrate in support of whom, such acts had been done: in order therefore to remove every such discouragement from the minds of his Majesty's subjects, and to induce them, upon all proper occasions, to exert themselves in support of the public peace of the province, and of the authority of the King and Parliament of Great Britain *over the same;* be it enacted . . . That if any inquisition or indictment shall be found, or if any appeal shall be sued or preferred against any person, for murther, or other capital offence, in the province of the *Massachusett's Bay*, and it shall appear, by information given upon oath to the governor . . . [or lieutenant governor] . . . of the said province, that the fact was committed by the person against whom such inquisition or indictment shall be found, or against whom such appeal shall be sued or preferred, as aforesaid, either in the execution of his duty as a magistrate, for the suppression of riots, or in the support of the laws of revenue, or in acting in his duty as an officer of revenue, or in acting under the direction and order of any magistrate, for the suppression of riots, or for the carrying into effect the laws of revenue, or in aiding and assisting in any of the cases aforesaid; and if it shall also appear, to the satisfaction of the said governor . . . that an indifferent trial cannot be had within the said province, in that case, it shall and may be lawful for the governor . . , to direct, with the advice and consent of the council, that the inquisition, indictment, or appeal, shall be tried in some

other of his Majesty's colonies, or in *Great Britain;* and for that purpose, to order the person against whom such inquisition or indictment shall be found, or against whom such appeal shall be sued or preferred, as aforesaid, to be sent, under sufficient custody, to the place appointed for his trial, or to admit such person to bail, taking a recognizance . . . from such person, with sufficient sureties, to be approved of by the said governor . . . , in such sums of money as the said governor . . . shall deem reasonable, for the personal appearance of such person, if the trial shall be appointed to be had in any other colony, before the governor, or lieutenant-governor, or commander in chief of such colony; and if the trial shall be appointed to be had in *Great Britain*, then before his Majesty's court of *King's Bench*, at a time to be mentioned in such recognizances; and the governor, or lieutenant-governor, or commander in chief of the colony where such trial shall be appointed to be had, or court of *King's Bench*, where the trial is appointed be had in *Great Britain*, upon the appearance of such person, according to such recognizance, or in custody, shall either commit such person, or admit him to bail, until such trial . . .

II. *And, to prevent a failure of justice, from the want of evidence on the trial of any such inquisition, indictment or appeal*, be it further enacted, That the governor . . . is hereby authorised and required, to bind in recognizances to his Majesty all such witnesses as the prosecutor or person against whom such inquisition or indictment shall be found, or appeal sued or preferred, shall desire to attend the trial of the said inquisition, indictment, or appeal, for their personal appearance, at the time and place of such trial, to give evidence: and the said governor . . . shall thereupon appoint a reasonable sum to be allowed for the expences of every such witness . . .

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V. And be it further enacted . . . , That where it shall be made appear to the judges or justices of any court, within the said province of *Massachuset's Bay*, by any person [charged with crimes as aforesaid], that he intends to make application to the governor . . . that such inquisition, indictment, or appeal, may be tried in some other of his Majesty's colonies, or in *Great Britain*, the said judges or justices are hereby authorised and required to adjourn or postpone the trial of such inquisition, indictment, or appeal,

for a reasonable time, and admit the person to bail, in order that he may make application to the governor . . . for the purpose aforesaid.

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No. 43. Declaration and Resolves of the First Continental Congress

October 14, 1774

JUNE 17, 1774, the Massachusetts House of Representatives, under the leadership of Samuel Adams, resolved: "That a meeting of committees from the several colonies on this continent is highly expedient and necessary, to consult upon the present state of the colonies, and the miseries to which they are and must be reduced by the operation of certain acts of Parliament respecting America, and to deliberate and determine upon wise and proper measures, to be by them recommended to all the colonies, for the recovery and establishment of their just rights and liberties, civil and religious, and the restoration of union and harmony between Great Britain and the colonies, most ardently desired by all good men: Therefore, resolved, that the Hon. James Bowdoin, Esq., the Hon. Thomas Cushing, Esq., Mr. Samuel Adams, John Adams and Robert Treat Paine, Esqrs., be, and they are hereby appointed a committee on the part of this province, for the purposes aforesaid, any three of whom to be a quorum, to meet such committees or delegates from the other colonies as have been or may be appointed, either by their respective houses of burgesses or representatives, or by convention, or by the committees of correspondence appointed by the respective houses of assembly, in the city of Philadelphia, or any other place that shall be judged most suitable by the committee, on the 1st day of September next; and that the speaker of the house be directed, in a letter to the speakers of the houses of burgesses or representatives in the several colonies, to inform them of the substance of these resolves."

In accordance with this call, delegates from all the colonies except North Carolina and Georgia met at Philadelphia September 5; representatives from North Carolina appearing on the 14th. On the 7th, a committee of two from each colony was appointed "to state the rights of the colonies in general, the several instances in which those rights are violated or infringed, and the means most proper to be pursued for obtaining a restoration of them." A report under this resolution was brought in on the 22d, and read. On the 24th, however, it was voted "that the Congress do confine themselves, at present, to the consideration of such rights as have been infringed by acts of the British Parliament since the year 1763." A report in accordance with this vote being brought in and read, further consideration was postponed

while the Congress deliberated "on the means most proper to be used for a restoration" of colonial rights. The report on the rights and grievances of the colonies was finally taken up October 12, and on the 14th agreed to in the form following.

REFERENCES. — *Text* in *Journals of Congress* (ed. 1800), I., 26–30; see also Ford's ed., I. The record of proceedings in the journal is meagre; for additional details see Frothingham's *Rise of the Republic*, 331–391; John Adams's diary, in his *Works*, II., 340–404; and lives and works of members of the Congress. The instructions to the Virginia delegates, in Jefferson's *Writings* (ed. 1830), I., 100–116, are especially significant.

Whereas, since the close of the last war, the British parliament, claiming a power, of right, to bind the people of America by statutes in all cases whatsoever, hath, in some acts, expressly imposed taxes on them, and in others, under various pretences, but in fact for the purpose of raising a revenue, hath imposed rates and duties payable in these colonies, established a board of commissioners, with unconstitutional powers, and extended the jurisdiction of courts of admiralty, not only for collecting the said duties, but for the trial of causes merely arising within the body of a county.

And whereas, in consequence of other statutes, judges, who before held only estates at will in their offices, have been made dependant on the crown alone for their salaries, and standing armies kept in times of peace: And whereas it has lately been resolved in parliament, that by force of a statute, made in the thirty-fifth year of the reign of King Henry the Eighth, colonists may be transported to England, and tried there upon accusations for treasons and misprisions, or concealments of treasons committed in the colonies, and by a late statute, such trials have been directed in cases therein mentioned:

And whereas, in the last session of parliament, three statutes were made . . . [the Boston Port Act, the Massachusetts Government Act, and the Administration of Justice Act;] . . . and another statute was then made . . . [the Quebec Act] . . . All which statutes are impolitic, unjust, and cruel, as well as unconstitutional, and most dangerous and destructive of American rights:

And whereas, assemblies have been frequently dissolved, contrary to the rights of the people, when they attempted to deliberate on grievances; and their dutiful, humble, loyal, and reasonable

petitions to the crown for redress, have been repeatedly treated with contempt, by his Majesty's ministers of state:

The good people of the several colonies of New-Hampshire, Massachusetts-Bay, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Newcastle, Kent, and Sussex on Delaware, Maryland, Virginia, North-Carolina, and South-Carolina, justly alarmed at these arbitrary proceedings of parliament and administration, have severally elected, constituted, and appointed duputies to meet, and sit in general Congress, in the city of Philadelphia, in order to obtain such establishment, as that their religion, laws, and liberties, may not be subverted: Whereupon the deputies so appointed being now assembled, in a full and free representation of these colonies, taking into their most serious consideration, the best means of attaining the ends aforesaid, do, in the first place, as Englishmen, their ancestors in like cases have usually done, for asserting and vindicating their rights and liberties, DECLARE,

That the inhabitants of the English colonies in North-America, by the immutable laws of nature, the principles of the English constitution, and the several charters or compacts, have the following RIGHTS:

Resolved, N. C. D. 1. That they are entitled to life, liberty and property: and they have never ceded to any foreign power whatever, a right to dispose of either without their consent.

Resolved, N. C. D. 2. That our ancestors, who first settled these colonies, were at the time of their emigration from the mother country, entitled to all the rights, liberties, and immunities of free and natural-born subjects, within the realm of England.

Resolved, N. C. D. 3. That by such emigration they by no means forfeited, surrendered, or lost any of those rights, but that they were, and their descendants now are, entitled to the exercise and enjoyment of all such of them, as their local and other circumstances enable them to exercise and enjoy.

Resolved, 4. That the foundation of English liberty, and of all free government, is a right in the people to participate in their legislative council: and as the English colonists are not represented, and from their local and other circumstances, cannot properly be represented in the British parliament, they are entitled to a free and exclusive power of legislation in their several pro-

vincial legislatures, where their right of representation can alone be preserved, in all cases of taxation and internal polity, subject only to the negative of their sovereign, in such manner as has been heretofore used and accustomed: But, from the necessity of the case, and a regard to the mutual interest of both countries, we cheerfully consent to the operation of such acts of the British parliament, as are bona fide, restrained to the regulation of our external commerce, for the purpose of securing the commercial advantages of the whole empire to the mother country, and the commercial benefits of its respective members; excluding every idea of taxation internal or external, for raising a revenue on the subjects, in America, without their consent.

Resolved, N. C. D. 5. That the respective colonies are entitled to the common law of England, and more especially to the great and inestimable privilege of being tried by their peers of the vicinage, according to the course of that law.

Resolved, 6. That they are entitled to the benefit of such of the English statutes, as existed at the time of their colonization; and which they have, by experience, respectively found to be applicable to their several local and other circumstances.

Resolved, N. C. D. 7. That these, his majesty's colonies, are likewise entitled to all the immunities and privileges granted and confirmed to them by royal charters, or secured by their several codes of provincial laws.

Resolved, N. C. D. 8. That they have a right peaceably to assemble, consider of their grievances, and petition the king; and that all prosecutions, prohibitory proclamations, and commitments for the same, are illegal.

Resolved, N. C. D. 9. That the keeping a standing army in these colonies, in times of peace, without the consent of the legislature of that colony, in which such army is kept, is against law.

Resolved, N. C. D. 10. It is indispensably necessary to good government, and rendered essential by the English constitution, that the constituent branches of the legislature be independent of each other; that, therefore, the exercise of legislative power in several colonies, by a council appointed, during pleasure, by the crown, is unconstitutional, dangerous and destructive to the freedom of American legislation.

All and each of which the aforesaid deputies, in behalf of them-

selves, and their constituents, do claim, demand, and insist on, as their indubitable rights and liberties; which cannot be legally taken from them, altered or abridged by any power whatever, without their own consent, by their representatives in their several provincial legislatures.

In the course of our inquiry, we find many infringements and violations of the foregoing rights, which, from an ardent desire, that harmony and mutual intercourse of affection and interest may be restored, we pass over for the present, and proceed to state such acts and measures as have been adopted since the last war, which demonstrate a system formed to enslave America.

Resolved, N. C. D. That the following acts of parliament are infringements and violations of the rights of the colonists; and that the repeal of them is essentially necessary, in order to restore harmony between Great-Britain and the American colonies, viz. . . . [The Stamp Act, the Townshend Revenue Act, the coercive acts of 1774, the Quebec Act, &c.]. . . .

Also, that the keeping a standing army in several of these colonies, in time of peace, without the consent of the legislature of that colony, in which such army is kept, is against law.

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No. 44. The Association

October 20, 1774

SEPTEMBER 22, 1774, the Continental Congress unanimously voted to "request the merchants and others, in the several colonies, not to send to Great Britain any orders for goods, and to direct the execution of all orders already sent to be delayed or suspended, until the sense of the Congress on the means to be taken for the preservation of the liberties of America is made public." On the 27th it was resolved "that from and after the first day of December next, there be no importation into British America, from Great Britain or Ireland, of any goods, wares or merchandize whatever, or from any other place of any such goods, wares or merchandizes as shall have been exported from Great Britain or Ireland, and that no such goods, wares or merchandizes imported after the said first day of December next be used or purchased." A resolution of September 30 declared that exportation to Great Britain, Ireland, and the West Indies ought to cease from and after Sept. 10, 1775, "unless the grievances of America are redressed before that time;" and a committee was appointed "to bring in a plan for carrying into effect the non-

importation, non-consumption and non-exportation resolved on." October 6 the committee were directed to include in their plan a clause prohibiting the importation, after December 1, of molasses, coffee and pimento from the British plantations or Dominica, wines from Madeira and the Western Islands, and foreign indigo. The report of the committee was brought in October 12, and on the 18th was agreed to; on the 20th it was signed by fifty-three members of the Congress.

REFERENCES. — *Text* in *Journals of Congress* (ed. 1800), I., 31–35. Numerous documents relating to the observance of the Association in the different colonies are collected in Force's *American Archives*, Fourth Series, I., II.

WE, his majesty's most loyal subjects, the delegates of the several colonies of New-Hampshire, Massachusetts-Bay, Rhode-Island, Connecticut, New-York, New-Jersey, Pennsylvania, the three lower counties of Newcastle, Kent and Sussex on Delaware, Maryland, Virginia, North-Carolina, and South-Carolina, deputed to represent them in a continental Congress, held in the city of Philadelphia, on the fifth day of September, 1774, avowing our allegiance to his majesty, our affection and regard for our fellow-subjects in Great Britain and elsewhere, affected with the deepest anxiety, and most alarming apprehensions, at those grievances and distresses, with which his majesty's American subjects are oppressed; and having taken under our most serious deliberation, the state of the whole continent, find, that the present unhappy situation of our affairs is occasioned by a ruinous system of colony administration, adopted by the British ministry about the year 1763, evidently calculated for inslaving these colonies, and, with them, the British Empire. In prosecution of which system, various acts of parliament have been passed, for raising a revenue in America, for depriving the American subjects, in many instances, of the constitutional trial by jury, exposing their lives to danger, by directing a new and illegal trial beyond the seas, for crimes alleged to have been committed in America: And in prosecution of the same system, several late, cruel, and oppressive acts have been passed, respecting the town of Boston and the Massachusetts-Bay, and also an act for extending the province of Quebec, so as to border on the western frontiers of these colonies, establishing an arbitrary government therein, and discouraging the settlement of British subjects in that wide extended country; thus, by the influence of civil principles and ancient prejudices,

to dispose the inhabitants to act with hostility against the free Protestant colonies, whenever a wicked ministry shall chuse so to direct them.

To obtain redress of these grievances, which threaten destruction to the lives, liberty, and property of his majesty's subjects, in North-America, we are of opinion, that a non-importation, non-consumption, and non-exportation agreement, faithfully adhered to, will prove the most speedy, effectual, and peaceable measure: And, therefore, we do, for ourselves, and the inhabitants of the several colonies, whom we represent, firmly agree and associate, under the sacred ties of virtue, honour and love of our country, as follows:

First, That from and after the first day of December next, we will not import, into British America, from Great-Britain or Ireland, any goods, wares, or merchandize whatsoever, or from any other place, any such goods, wares, or merchandize, as shall have been exported from Great-Britain or Ireland; nor will we, after that day, import any East-India tea from any part of the world; nor any molasses, syrups, paneles, coffee, or pimento, from the British plantations or from Dominica; nor wines from Madeira, or the Western Islands; nor foreign indigo.

Second, We will neither import nor purchase, any slave imported after the first day of December next; after which time, we will wholly discontinue the slave trade, and will neither be concerned in it ourselves, nor will we hire our vessels, nor sell our commodities or manufactures to those who are concerned in it.

Third, As a non-consumption agreement, strictly adhered to, will be an effectual security for the observation of the non-importation, we, as above, solemnly agree and associate, that from this day, we will not purchase or use any tea, imported on account of the East-India company, or any on which a duty hath been or shall be paid; and from and after the first day of March next, we will not purchaase or use any East-India tea whatever; nor will we, nor shall any person for or under us, purchase or use any of those goods, wares, or merchandize, we have agreed not to import, which we shall know, or have cause to suspect, were imported after the first day of December, except such as come under the rules and directions of the tenth article hereafter mentioned.

Fourth, The earnest desire we have not to injure our fellow-subjects in Great-Britain, Ireland, or the West-Indies, induces us to suspend a non-exportation, until the tenth day of September, 1775; at which time, if the said acts and parts of acts of the British parliament herein after mentioned, are not repealed, we will not directly or indirectly, export any merchandize or commodity whatsoever to Great-Britain, Ireland, or the West-Indies, except rice to Europe.

Fifth, Such as are merchants, and use the British and Irish trade, will give orders, as soon as possible, to their factors, agents and correspondents, in Great-Britain and Ireland, not to ship any goods to them, on any pretence whatsoever, as they cannot be received in America; and if any merchant, residing in Great-Britain or Ireland, shall directly or indirectly ship any goods, wares or merchandize, for America, in order to break the said non-importation agreement, or in any manner contravene the same, on such unworthy conduct being well attested, it ought to be made public; and, on the same being so done, we will not, from thenceforth, have any commercial connexion with such merchant.

Sixth, That such as are owners of vessels will give positive orders to their captains, or masters, not to receive on board their vessels any goods prohibited by the said non-importation agreement, on pain of immediate dismission from their service.

Seventh, We will use our utmost endeavours to improve the breed of sheep, and increase their number to the greatest extent; and to that end, we will kill them as seldom as may be, especially those of the most profitable kind; nor will we export any to the West-Indies or elsewhere; and those of us, who are or may become overstocked with, or can conveniently spare any sheep, will dispose of them to our neighbours, especially to the poorer sort, on moderate terms.

Eighth, We will, in our several stations, encourage frugality, œconomy, and industry, and promote agriculture, arts and the manufactures of this country, especially that of wool; and will discountenance and discourage every species of extravagance and dissipation, especially all horse-racing, and all kinds of gaming, cock fighting, exhibitions of shews, plays, and other expensive diversions and entertainments; and on the death of any relation

or friend, none of us, or any of our families will go into any further mourning-dress, than a black crape or ribbon on the arm or hat, for gentlemen, and a black ribbon and necklace for ladies, and we will discontinue the giving of gloves and scarves at funerals.

Ninth, Such as are venders of goods or merchandize will not take advantage of the scarcity of goods, that may be occasioned by this association, but will sell the same at the rates we have been respectively accustomed to do, for twelve months last past. — And if any vender of goods or merchandize shall sell such goods on higher terms, or shall, in any manner, or by any device whatsoever, violate or depart from this agreement, no person ought, nor will any of us deal with any such person, or his or her factor or agent, at any time thereafter, for any commodity whatever.

Tenth, In case any merchant, trader, or other person, shall import any goods or merchandize, after the first day of December, and before the first day of February next, the same ought forthwith, at the election of the owner, to be either re-shipped or delivered up to the committee of the country or town, wherein they shall be imported, to be stored at the risque of the importer, until the non-importation agreement shall cease, or be sold under the direction of the committee aforesaid; and in the last-mentioned case, the owner or owners of such goods shall be reimbursed out of the sales, the first cost and charges, the profit, if any, to be applied towards relieving and employing such poor inhabitants of the town of Boston, as are immediate sufferers by the Boston port-bill; and a particular account of all goods so returned, stored, or sold, to be inserted in the public papers; and if any goods or merchandizes shall be imported after the said first day of February, the same ought forthwith to be sent back again, without breaking any of the packages thereof.

Eleventh, That a committee be chosen in every county, city, and town, by those who are qualified to vote for representatives in the legislature, whose business it shall be attentively to observe the conduct of all persons touching this association; and when it shall be made to appear, to the satisfaction of a majority of any such committee, that any person within the limits of their appointment has violated this association, that such majority do

forthwith cause the truth of the case to be published in the gazette; to the end, that all such foes to the rights of British-America may be publicly known, and universally contemned as the enemies of American liberty; and thenceforth we respectively will break off all dealings with him or her.

Twelfth, That the committee of correspondence, in the respective colonies, do frequently inspect the entries of their custom-houses, and inform each other, from time to time, of the true state thereof, and of every other material circumstance that may occur relative to this association.

Thirteenth, That all manufactures of this country be sold at reasonable prices, so that no undue advantage be taken of a future scarcity of goods.

Fourteenth, And we do further agree and resolve, that we will have no trade, commerce, dealings or intercourse whatsoever, with any colony or province, in North-America, which shall not accede to, or which shall hereafter violate this association, but will hold them as unworthy of the rights of freemen, and as inimical to the liberties of their country.

[This association to be adhered to until the acts complained of are repealed.]

No. 45. Lord North's Conciliatory Resolution

February 27, 1775

Lord North's unexpected offer of conciliation, in the form of the resolution following, was presented to the House of Commons, in Committee of the Whole, February 20, 1775. Although the proposal was generally unsatisfactory to the friends of the ministry, it was adopted by a vote of 274 to 88. On the 27th the resolution was reported to the House, and agreed to.

References. — *Text* in Force's *American Archives*, Fourth Series, I., 1598. The debates on the resolution are also in *ib.*, 1597–1622. Public opinion in England is best exhibited in the *Annual Register* (1775). Dartmouth's letter to the governors, March 3, urging acceptance of the proposition, is in Force, *op. cit.*, Fourth Series, II., 27, 28.

That it is the opinion of this Committee, that when the Governour, Council, and Assembly, or General Court, of any of his

Majesty's Provinces or Colonies in *America*, shall propose to make provision, according to the condition, circumstances, and situation of such Province or Colony, for contributing their proportion to the common defence, (such proportion to be raised under the authority of the General Court, or General Assembly, of such Province or Colony, and disposable by Parliament,) and shall engage to make provision also for the support of the Civil Government, and the Administration of Justice, in such Province or Colony, it will be proper, if such proposal shall be approved by his Majesty and the two Houses of Parliament, and for so long as such provision shall be made accordingly, to forbear, in respect of such Province or Colony, to levy any Duty, Tax, or Assessment, or to impose any farther Duty, Tax, or Assessment, except only such Duties as it may be expedient to continue to levy or to impose for the regulation of commerce; the nett produce of the Duties last mentioned to be carried to the account of such Province or Colony respectively.

No. 46. New England Restraining Act

March 30, 1775

The petition to the King, adopted by the first Continental Congress Oct. 26, 1774, was laid before Parliament Jan. 19, 1775, accompanied by voluminous papers relating to affairs in America. February 1 a provisional bill, presented to the House of Lords by the Earl of Chatham, and designed to settle the difficulties in the colonies while "asserting the supreme legislative authority and superintending power of Great Britain," was rejected. An address to the King, assuring him of support at all hazards in measures to put down rebellion, was agreed to notwithstanding the protest of eighteen members of the Lords, who pronounced the address a virtual declaration of war. February 10, in the Commons, Lord North, asserting that "as the Americans had refused to trade with Great Britain, it was but just that they be not suffered to trade with any other nation," moved for leave to bring in a bill to restrain the trade and commerce of the New England colonies to Great Britain, Ireland, and the West Indies. By a vote of 261 to 85 the motion was carried. The bill was presented on the 17th, had its second reading on the 24th, and March 8 passed without a division. The bill had its second reading in the Lords March 16, and passed that house on the 21st, by a vote of 73 to 21, with an amendment, agreed to by a vote of 52 to 21, including

New Jersey, Pennsylvania, Maryland, Virginia, and South Carolina within the scope of the act. Sixteen Lords entered a protest against the bill. The Commons, who already had before them a bill restraining the trade of the southern colonies, rejected the amendment, and the bill passed without it. March 30 the act received the royal assent. The bill to restrain the trade of the other colonies became law in April. Both acts were repealed by an act of December 22, 1775, prohibiting all trade and intercourse with America.

REFERENCES. — *Text* in Pickering's *Statutes at Large*, XXXI., 4–11. The act is cited as 15 Geo. III., c. 10. For the proceedings in Parliament, see the *Parliamentary History*, XVIII., or Force's *American Archives*, Fourth Series, I., 1621–1716; *cf.* also the *Annual Register* (1775).

An act to restrain the trade and commerce of the provinces of Massachuset's Bay *and* New Hampshire, *and colonies of* Connecticut *and* Rhode Island, *and* Providence Plantation, *in* North America, *to* Great Britain, Ireland, *and the* British islands *in the* West Indies; *and to prohibit such provinces and colonies from carrying on any fishery on the banks of* Newfoundland, *or other places therein mentioned, under certain conditions and limitations.*

[The section begins with a statement of the purport of certain of the acts of trade, and continues:] *and whereas, during the continuance of the combinations and disorders, which at this time prevail within the provinces of* Massachuset's Bay *and* New Hampshire, *and the colonies of* Connecticut *and* Rhode Island, *to the obstruction of the commerce of these kingdoms, and other his Majesty's dominions, and in breach and violation of the laws of this realm, it is highly unfit that the inhabitants of the said provinces and colonies should enjoy the same privileges of trade, and the same benefits and advantages to which his Majesty's faithful and obedient subjects are intitled;* be it therefore enacted . . . , That from and after . . . [July 1, 1775,] . . . and during the continuance of this act, no goods, wares, or merchandises, which are particularly enumerated in, and by the said act made in the twelfth year of king *Charles* the Second, or any other act, being the growth, product, or manufacture of the provinces of *Massachuset's Bay*, or *New Hampshire*, or colonies of *Connecticut*, *Rhode Island*, or *Providence Plantation*, in *North America*, or any or either of them, are to be brought to some other *British* colony, or to *Great Britain;* or any such enumerated goods, wares, or

merchandise, which shall at any time or times have been imported or brought into the said provinces or colonies, or any or either of them, shall be shipped, carried, conveyed, or transported, from any of the said provinces or colonies respectively, to any land, island, territory, dominion, port, or place whatsoever, other than to *Great Britain*, or some of the *British* islands in the *West Indies*, to be laid on shore there; and that no other goods, wares, or merchandises whatsoever, of the growth, product, or manufacture of the provinces or colonies herein-before mentioned, or which shall at any time or times have been imported or brought into the same, shall, from and after the said first day of *July*, and during the continuance of this act, be shipped, carried, conveyed, or trans ported, from any of the said provinces or colonies respectively, to any other land, island, territory, dominion, port, or place whatsoever, except to the kingdoms of *Great Britain* or *Ireland*, or to some of the *British* islands in the *West Indies*, to be laid on shore there; any law, custom, or usage, to the contrary notwithstanding.

* * * * * * * *

IV. And it is hereby further enacted . . . , That from and after . . . [September 1, 1775] . . . and during the continuance of this act, no sort of wines, salt, or any goods or commodities whatsoever, (except horses, victual, and linen cloth, the produce and manufacture of *Ireland*, imported directly from thence), shall be imported into any of the said colonies or provinces herein-before respectively mentioned, upon any pretence whatsoever, unless such goods shall be *bona fide* and without fraud laden and shipped in *Great Britain*, and carried directly from thence, upon forfeiture thereof, and of the ship or vessel on board which such goods shall be laden . . .

* * * * * * * *

VI. [Goods from the British West Indies may continue to be imported.]

VII. And it is hereby further enacted . . . , That if any ship or vessel, being the property of the subjects of *Great Britain*, not belonging to and fitted out from *Great Britain* or *Ireland*, or the islands of *Guernsey*, *Jersey*, *Sark*, *Alderney*, or *Man*, shall be found, after . . . [July 20, 1775,] . . . carrying on any fishery, of what nature or kind soever, upon the banks of *Newfoundland*, the coast of *Labrador*, or within the river or gulf of

Saint Lawrence, or upon the coast of *Cape Breton*, or *Nova Scotia*, or any other part of the coast of *North America*, or having on board materials for carrying on any such fishery, every such ship or vessel, with her guns, ammunition, tackle, apparel, and furniture, together with the fish, if any shall be found on board, shall be forfeited, unless the master, or other person, having the charge of such ship or vessel, do produce to the commander of any of his Majesty's ships of war, stationed for the protection and superintendence of the *British* fisheries in *America*, a certificate, under the hand and seal of the governor or commander in chief, of any of the colonies or plantations of *Quebec*, *Newfoundland*, *Saint John*, *Nova Scotia*, *New York*, *New Jersey*, *Pensylvania*, *Maryland*, *Virginia*, *North Carolina*, *South Carolina*, *Georgia*, *East Florida*, *West Florida*, *Bahamas*, and *Bermudas*, setting forth, that such ship or vessel, expressing her name, and the name of her master, and describing her built and burthen, hath fitted and cleared out, from some one of the said colonies or plantations, in order to proceed upon the said fishery, and that she actually and *bona fide* belongs to and is the whole and entire property of his Majesty's subjects, inhabitants of the said colony or plantation. . .

[Section VIII subjects vessels engaged in the fisheries to search. Sections IX., X., and XI. provide that this act shall not extend to ships clearing from the colonies before June 1, for the whale fishery only; nor to ships belonging to the island of Nantucket, cleared for the whale fishery, and having a proper certificate; nor to fishing vessels fitted out by the towns of Marshfield and Scituate. By Sec. XII., the St. Croix river is declared to be, for the purposes of this act, the boundary between Massachusetts and Nova Scotia.]

XIII. *And whereas it is the intent and meaning of this act, that the several prohibitions and restraints herein imposed upon the trade and commerce, and fisheries, of the said provinces and colonies should be discontinued and cease, so soon as the trade and commerce of his Majesty's subjects may be carried on without interruption;* be it therefore enacted . . . , That whenever it shall be made appear to the satisfaction of his Majesty's governor or commander in chief, and the majority of the council, in the provinces of *New Hampshire* and *Massachuset's Bay* respectively, that peace and obedience to the laws shall be so far restored

within the said provinces, or either of them, that the trade and commerce of his Majesty's subjects may be carried on without interruption within the same; and that goods, wares, and merchandise, have been freely imported into the said provinces, or either of them, from *Great Britain*, and exposed to sale, without any let, hindrance, or molestation, from or by reason of any unlawful combinations to prevent or obstruct the same; and that goods, wares, and merchandise, have in like manner been exported from the said provinces, or either of them respectively, to *Great Britain*, for and during the term of one calendar month preceeding; that then, and in such case, it shall and may be lawful for the governor or commander in chief, with the advice of the council of such provinces respectively, by proclamation, under the seal of such respective province, to notify the same to the several officers of the customs, and all others; and after such proclamation, this act with respect to such province, within which such proclamation or proclamations have been issued as aforesaid, shall be discontinued and cease, (except as herein-after provided) . . .

[By Sections XIV. and XV., like proclamation may be made for Connecticut and Rhode Island, on proof that lawful trade has been resumed; but proceedings upon previous seizures are not to be thereby discharged.]

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No. 47. Declaration of the Causes and Necessity of Taking up Arms

July 6, 1775

JUNE 23, 1775, John Rutledge of South Carolina, William Livingston of New Jersey, Franklin, Jay, and Thomas Johnson of Maryland, were appointed a committee "to draw up a declaration, to be published by General Washington, upon his arrival at the camp before Boston." The report was brought in the next day, and on the 26th, after debate, was recommitted, and Dickinson and Jefferson added to the committee. A draft prepared by Jefferson being thought by Dickinson too outspoken, the latter prepared a new one, retaining, however, the closing paragraphs as drawn by Jefferson. In this form the declaration was reported June 27, and agreed to July 6.

REFERENCES. — *Text* in *Journals of Congress* (ed. 1800), I., 134–139. The case for the colonies in 1775 is best stated in John Adams's *Novanglus* (Works, IV., 11–177), in reply to a series of newspaper articles by Daniel Leonard, over the signature of *Massachusettensis*. The two series were printed together at Boston in 1819.

A declaration by the Representatives of the United Colonies of North-America, now met in Congress at Philadelphia, setting forth the causes and necessity of their taking up arms.

IF it was possible for men, who exercise their reason to believe, that the divine Author of our existence intended a part of the human race to hold an absolute property in, and an unbounded power over others, marked out by his infinite goodness and wisdom, as the objects of a legal domination never rightfully resistible, however severe and oppressive, the inhabitants of these colonies might at least require from the parliament of Great-Britain some evidence, that this dreadful authority over them, has been granted to that body. But a reverence for our great Creator, principles of humanity, and the dictates of common sense, must convince all those who reflect upon the subject, that government was instituted to promote the welfare of mankind, and ought to be administered for the attainment of that end. The legislature of Great-Britain, however, stimulated by an inordinate passion for a power not only unjustifiable, but which they know to be peculiarly reprobated by the very constitution of that kingdom, and desperate of success in any mode of contest, where regard should be had to truth, law, or right, have at length, deserting those, attempted to effect their cruel and impolitic purpose of enslaving these colonies by violence, and have thereby rendered it necessary for us to close with their last appeal from reason to arms. — Yet, however blinded that assembly may be, by their intemperate rage for unlimited domination, so to slight justice and the opinion of mankind, we esteem ourselves bound by obligations of respect to the rest of the world, to make known the justice of our cause.

Our forefathers, inhabitants of the island of Great-Britain, left their native land, to seek on these shores a residence for civil and religious freedom. At the expense of their blood, at the hazard of their fortunes, without the least charge to the country from

which they removed, by unceasing labour, and an unconquerable spirit, they effected settlements in the distant and inhospitable wilds of America, then filled with numerous and warlike nations of barbarians. — Societies or governments, vested with perfect legislatures, were formed under charters from the crown, and an harmonious intercourse was established between the colonies and the kingdom from which they derived their origin. The mutual benefits of this union became in a short time so extraordinary, as to excite astonishment. It is universally confessed, that the amazing increase of the wealth, strength, and navigation of the realm, arose from this source; and the minister, who so wisely and successfully directed the measures of Great-Britain in the late war, publicly declared, that these colonies enabled her to triumph over her enemies. — Towards the conclusion of that war, it pleased our sovereign to make a change in his counsels. — From that fatal moment, the affairs of the British empire began to fall into confusion, and gradually sliding from the summit of glorious prosperity, to which they had been advanced by the virtues and abilities of one man, are at length distracted by the convulsions, that now shake it to its deepest foundations. — The new ministry finding the brave foes of Britain, though frequently defeated, yet still contending, took up the unfortunate idea of granting them a hasty peace, and of then subduing her faithful friends.

These devoted colonies were judged to be in such a state, as to present victories without bloodshed, and all the easy emoluments of statuteable plunder. — The uninterrupted tenor of their peaceable and respectful behaviour from the beginning of colonization, their dutiful, zealous, and useful services during the war, though so recently and amply acknowledged in the most honourable manner by his majesty, by the late king, and by parliament, could not save them from the meditated innovations. — Parliament was influenced to adopt the pernicious project, and assuming a new power over them, have in the course of eleven years, given such decisive specimens of the spirit and consequences attending this power, as to leave no doubt concerning the effects of acquiescence under it. They have undertaken to give and grant our money without our consent, though we have ever exercised an exclusive right to dispose of our own property;

statutes have been passed for extending the jurisdiction of courts of admiralty and vice-admiralty beyond their ancient limits; for depriving us of the accustomed and inestimable privilege of trial by jury, in cases affecting both life and property; for suspending the legislature of one of the colonies; for interdicting all commerce to the capital of another; and for altering fundamentally the form of government established by charter, and secured by acts of its own legislature solemnly confirmed by the crown; for exempting the "murderers" of colonists from legal trial, and in effect, from punishment; for erecting in a neighbouring province, acquired by the joint arms of Great-Britain and America, a despotism dangerous to our very existence; and for quartering soldiers upon the colonists in time of profound peace. It has also been resolved in parliament, that colonists charged with committing certain offences, shall be transported to England to be tried.

But why should we enumerate our injuries in detail? By one statute it is declared, that parliament can "of right make laws to bind us in all cases whatsoever." What is to defend us against so enormous, so unlimited a power? Not a single man of those who assume it, is chosen by us; or is subject to our controul or influence; but, on the contrary, they are all of them exempt from the operation of such laws, and an American revenue, if not diverted from the ostensible purposes for which it is raised, would actually lighten their own burdens in proportion, as they increase ours. We saw the misery to which such despotism would reduce us. We for ten years incessantly and ineffectually besieged the throne as supplicants; we reasoned, we remonstrated with parliament, in the most mild and decent language.

Administration sensible that we should regard these oppressive measures as freemen ought to do, sent over fleets and armies to enforce them. The indignation of the Americans was roused, it is true; but it was the indignation of a virtuous, loyal, and affectionate people. A Congress of delegates from the United Colonies was assembled at Philadelphia, on the fifth day of last September. We resolved again to offer an humble and dutiful petition to the king, and also addressed our fellow-subjects of Great-Britain. We have pursued every temperate, every respectful measure: we have even proceeded to break off our commercial intercourse

with our fellow-subjects, as the last peaceable admonition, that our attachment to no nation upon earth should supplant our attachment to liberty. — This, we flattered ourselves, was the ultimate step of the controversy: but subsequent events have shewn, how vain was this hope of finding moderation in our enemies.

Several threatening expressions against the colonies were inserted in his majesty's speech; our petition, tho we were told it was a decent one, and that his majesty had been pleased to receive it graciously, and to promise laying it before his parliament, was huddled into both houses among a bundle of American papers, and there neglected. The lords and commons in their address, in the month of February, said, that "a rebellion at that time actually existed within the province of Massachusetts-Bay; and that those concerned in it, had been countenanced and encouraged by unlawful combinations and engagements, entered into by his majesty's subjects in several of the other colonies; and therefore they besought his majesty, that he would take the most effectual measures to inforce due obedience to the laws and authority of the supreme legislature." — Soon after, the commercial intercourse of whole colonies, with foreign countries, and with each other, was cut off by an act of parliament; by another several of them were intirely prohibited from the fisheries in the seas near their co[*a*]sts, on which they always depended for their sustenance; and large reinforcements of ships and troops were immediately sent over to general Gage.

Fruitless were all the entreaties, arguments, and eloquence of an illustrious band of the most distinguished peers, and commoners, who nobly and stren[*u*]ously asserted the justice of our cause, to stay, or even to mitigate the heedless fury with which these accumulated and unexampled outrages were hurried on. — Equally fruitless was the interference of the city of London, of Bristol, and many other respectable towns in our favour. Parliament adopted an insidious manœuvre calculated to divide us, to establish a perpetual auction of taxations where colony should bid against colony, all of them uninformed what ransom would redeem their lives; and thus to extort from us, at the point of the bayonet, the unknown sums that should be sufficient to gratify, if possible to gratify, ministerial rapacity, with the miserable

indulgence left to us of raising, in our own mode, the prescribed tribute. What terms more rigid and humiliating could have been dictated by remorseless victors to conquered enemies? in our circumstances to accept them, would be to deserve them.

Soon after the intelligence of these proceedings arrived on this continent, general Gage, who in the course of the last year had taken possession of the town of Boston, in the province of Massachusetts-Bay, and still occupied it is [*as*] a garrison, on the 19th day of April, sent out from that place a large detachment of his army, who made an unprovoked assault on the inhabitants of the said province, at the town of Lexington, as appears by the affidavits of a great number of persons, some of whom were officers and soldiers of that detachment, murdered eight of the inhabitants, and wounded many others. From thence the troops proceeded in warlike array to the town of Concord, where they set upon another party of the inhabitants of the same province, killing several and wounding more, until compelled to retreat by the country people suddenly assembled to repel this cruel aggression. Hostilities, thus commenced by the British troops, have been since prosecuted by them without regard to faith or reputation. — The inhabitants of Boston being confined within that town by the general their governor, and having, in order to procure their dismission, entered into a treaty with him, it was stipulated that the said inhabitants having deposited their arms with their own magistrates, should have liberty to depart, taking with them their other effects. They accordingly delivered up their arms, but in open violation of honour, in defiance of the obligation of treaties, which even savage nations esteemed sacred, the governor ordered the arms deposited as aforesaid, that they might be preserved for their owners, to be seized by a body of soldiers; detained the greatest part of the inhabitants in the town, and compelled the few who were permitted to retire, to leave their most valuable effects behind.

By this perfidy wives are separated from their husbands, children from their parents, the aged and the sick from their relations and friends, who wish to attend and comfort them; and those who have been used to live in plenty and even elegance, are reduced to deplorable distress.

The general, further emulating his ministerial masters, by a

proclamation bearing date on the 12th day of June, after venting the grossest falsehoods and calumnies against the good people of these colonies, proceeds to "declare them all, either by name or description, to be rebels and traitors, to supersede the course of the common law, and instead thereof to publish and order the use and exercise of the law martial." — His troops have butchered our countrymen, have wantonly burnt Charlestown, besides a considerable number of houses in other places; our ships and vessels are seized; the necessary supplies of provisions are intercepted, and he is exerting his utmost power to spread destruction and devastation around him.

We have received certain intelligence, that general Carelton [*Carleton*], the governor of Canada, is instigating the people of that province and the Indians to fall upon us; and we have but too much reason to apprehend, that schemes have been formed to excite domestic enemies against us. In brief, a part of these colonies now feel, and all of them are sure of feeling, as far as the vengeance of administration can inflict them, the complicated calamities of fire, sword, and famine. We[1] are reduced to the alternative of chusing an unconditional submission to the tyranny of irritated ministers, or resistance by force. — The latter is our choice. — We have counted the cost of this contest, and find nothing so dreadful as voluntary slavery. — Honour, justice, and humanity, forbid us tamely to surrender that freedom which we received from our gallant ancestors, and which our innocent posterity have a right to receive from us. We cannot endure the infamy and guilt of resigning succeeding generations to that wretchedness which inevitably awaits them, if we basely entail hereditary bondage upon them.

Our cause is just. Our union is perfect. Our internal resources are great, and, if necessary, foreign assistance is undoubtedly attainable. — We gratefully acknowledge, as signal instances of the Divine favour towards us, that his Providence would not permit us to be called into this severe controversy, until we were grown up to our present strength, had been previously exercised in warlike operation, and possessed of the means of defending ourselves. With hearts fortified with these animating reflections, we most solemnly, before God and the world, *declare*, that, exert-

[1] From this point the declaration follows Jefferson's draft — Ed.

ing the utmost energy of those powers, which our beneficent Creator hath graciously bestowed upon us, the arms we have been compelled by our enemies to assume, we will, in defiance of every hazard, with unabating firmness and perseverence, employ for the preservation of our liberties; being with one mind resolved to die freemen rather then to live slaves.

Lest this declaration should disquiet the minds of our friends and fellow-subjects in any part of the empire, we assure them that we mean not to dissolve that union which has so long and so happily subsisted between us, and which we sincerely wish to see restored. — Necessity has not yet driven us into that desperate measure, or induced us to excite any other nation to war against them. — We have not raised armies with ambitious designs of separating from Great-Britain, and establishing independent states. We fight not for glory or for conquest. We exhibit to mankind the remarkable spectacle of a people attacked by unprovoked enemies, without any imputation or even suspicion of offence. They boast of their privileges and civilization, and yet proffer no milder conditions than servitude or death.

In our own native land, in defence of the freedom that is our birth-right, and which we ever enjoyed till the late violation of it — for the protection of our property, acquired solely by the honest industry of our fore-fathers and ourselves, against violence actually offered, we have taken up arms. We shall lay them down when hostilities shall cease on the part of the aggressors, and all danger of their being renewed shall be removed, and not before.

With an humble confidence in the mercies of the supreme and impartial Judge and Ruler of the Universe, we most devoutly implore his divine goodness to protect us happily through this great conflict, to dispose our adversaries to reconciliation on reasonable terms, and thereby to relieve the empire from the calamities of civil war.

No. 48. Report on Lord North's Conciliatory Resolution

July 31, 1775

Lord North's offer of conciliation came before the Continental Congress May 26, 1775, in the form of a communication from the assembly of New Jersey; it was also transmitted later by the assemblies of Pennsylvania and Virginia. A memorandum from Lord North, written by Grey Cooper, undersecretary of the treasury, urging acceptance of the proffered terms, was submitted May 30. July 22, the declaration of causes and other papers having been disposed of, Franklin, Jefferson, John Adams, and Richard Henry Lee were appointed a committee to consider and report on the resolution. The report, drawn by Jefferson on the lines of a report of the Virginia House of Burgesses, June 10, on the same resolution, was brought in July 25, and, on the 31st, agreed to.

References. — *Text* in *Journals of Congress* (ed. 1800), I., 175–178. The Virginia report is in Force's *American Archives*, Fourth Series, II., 1200–1202.

[The report recites the resolution of Lord North, and continues:]

The Congress took the said resolution into consideration, and are, thereupon, of opinion,

That the colonies of America are entitled to the sole and exclusive privilege of giving and granting their own money: that this involves a right of deliberating whether they will make any gift for what purposes it shall be made, and what shall be its amount; and that it is a high breach of this privilege for any body of men, extraneous to their constitutions, to prescribe the purposes for which money shall be levied on them, to take to themselves the authority of judging of their conditions, circumstances and situations, and of determining the amount of the contribution to be levied.

That as the colonies possess a right of appropriating their gifts, so are they entitled at all times to enquire into their application, to see that they be not wasted among the venal and corrupt for the purpose of undermining the civil rights of the givers, nor yet be diverted to the support of standing armies, inconsistent with their freedom and subversive of their quiet. To propose, therefore, as this resolution does, that the monies given by the colo

nies shall be subject to the disposal of parliament alone, is to propose that they shall relinquish this right of enquiry, and put it in the power of others to render their gifts ruinous, in proportion as they are liberal.

That this privilege of giving or of withholding our monies, is an important barrier against the undue exertion of prerogative, which, if left altogether without controul, may be exercised to our great oppression; and all history shows how efficacious is its intercessions for redress of grievances and re-establishment of rights, and how improvident it would be to part with so powerful a mediator.

We are of opinion that the proposition contained in this resolution is unreasonable and insidious: Unreasonable, because, if we declare we accede to it, we declare, without reservation, we will purchace the favour of parliament, not knowing at the same time at what price they will please to estimate their favour; it is insidious, because, individual colonies, having bid and bidden again, till they find the avidity of the seller too great for all their powers to satisfy; are then to return into opposition, divided from their sister colonies whom the minister will have previously detached by a grant of easier terms, or by an artful procrastination of a definitive answer.

That the suspension of the exercise of their pretended power of taxation being expressly made commensurate with the continuance of our gifts, these must be perpetual to make that so. Whereas no experience has shewn that a gift of perpetual revenue secures a perpetual return of duty or of kind disposition. On the contrary, the parliament itself, wisely attentive to this observation, are in the established practice of granting their supplies from year to year only.

Desirous and determined, as we are, to consider, in the most dispassionate view, every seeming advance towards a reconciliation made by the British parliament, let our brethren of Britain reflect, what would have been the sacrifice to men of free spirits, had even fair terms been proffered, as these insidious proposals were with circumstances of insult and defiance. A proposition to give our money, accompanied with large fleets and armies, seems addressed to our fears rather than to our freedom. With what patience would Britons have received articles of treaty from

any power on earth when borne on the point of the bayonet by military plenipotentiaries?

We think the attempt unnecessary to raise upon us by force or by threats our proportional contributions to the common defence, when all know, and themselves acknowledge, we have fully contributed, whenever called upon to do so in the character of freemen.

We are of opinion it is not just that the colonies should be required to oblige themselves to other contributions, while Great-Britain possesses a monopoly of their trade. This of itself lays them under heavy contribution. To demand, therefore, additional aids in the form of a tax, is to demand the double of their equal proportion: if we are to contribute equally with the other parts of the empire, let us equally with them enjoy free commerce with the whole world. But while the restrictions on our trade shut to us the resources of wealth, is it just we should bear all other burthens equally with those to whom every resource is open?

We conceive that the British parliament has no right to intermeddle with our provisions for the support of civil government, or administration of justice. The provisions we have made, are such as please ourselves, and are agreeable to our own circumstances: They answer the substantial purposes of government and of justice, and other purposes than these should not be answered. We do not mean that our people shall be burthened with oppressive taxes, to provide sinecures for the idle or the wicked, under colour of providing for a civil list. While parliament pursue their plan of civil government within their own jurisdiction, we also hope to pursue ours without molestation.

We are of opinion the proposition is altogether unsatisfactory, because it imports only a suspension of the mode, not a renunciation of the pretended right to tax us: because, too, it does not propose to repeal the several acts of parliament passed for the purposes of restraining the trade, and altering the form of government of one of our colonies: extending the boundaries and changing the government of Quebec; enlarging the jurisdiction of the courts of admiralty and vice-admiralty; taking from us the rights of trial by a jury of the vicinage, in cases affecting both life and property; transporting us into other countries to be tried for criminal offences; exempting, by mock-trial, the murderers

of colonists from punishment; and quartering soldiers on us in times of profound peace. Nor do they renounce the power of suspending our own legislatures, and for [*of*] legislating for us themselves in all cases whatsoever. On the contrary, to shew they mean to [*no*] discontinuance of injury, they pass acts, at the very time of holding out this proposition, for restraining the commerce and fisheries of the provinces of New-England, and for interdicting the trade of other colonies with all foreign nations, and with each other. This proves, unequivocally, they mean not to relinquish the exercise of indiscriminate legislation over us.

Upon the whole, this proposition seems to have been held up to the world, to deceive it into a belief that there was nothing in dispute between us but the mode of levying taxes; and that the parliament having now been so good as to give up this, the colonies are unreasonable if not perfectly satisfied: Whereas, in truth, our adversaries still claim a right of demanding *ad libitum*, and of taxing us themselves to the full amount of their demand, if we do comply with it. This leaves us without any thing we can call property. But, what is of more importance, and what in this proposal they keep out of sight, as if no such point was now in contest between us, they claim a right to alter our charters and establish laws, and leave us without any security for our lives and liberties. The proposition seems also to have been calculated more particularly to lull into fatal security, our well-affected fellow-subjects on the other side the water, till time should be given for the operation of those arms, which a British minister pronounced would instantaneously reduce the "cowardly" sons of America to unreserved submission. But, when the world reflects, how inadequate to justice are these vaunted terms; when it attends to the rapid and bold succession of injuries, which, during the course of eleven years, have been aimed at these colonies; when it reviews the pacific and respectful expostulations, which, during that whole time, were the sole arms we opposed to them; when it observes that our complaints were either not heard at all, or were answered with new and accumulated injuries; when it recollects that the minister himself, on an early occasion, declared, "that he would never treat with America, till he had brought her to his feet," and that an avowed partisan of ministry has more lately denounced against us the

dreadful sentence, "*delenda est Carthago;*" that this was done in presence of a British senate, and being unreproved by them, must be taken to be their own sentiment, (especially as the purpose has already in part been carried into execution, by their treatment of Boston and burning of Charlestown;) when it considers the great armaments with which they have invaded us, and the circumstances of cruelty with which these have commenced and prosecuted hostilities; when these things, we say, are laid together and attentively considered, can the world be deceived into an opinion that we are unreasonable, or can it hesitate to believe with us, that nothing but our own exertions may defeat the ministerial sentence of death or abject submission.

No. 49. Proclamation of Rebellion

August 23, 1775

THE party in Congress which still hoped for reconciliation succeeded, June 3, 1775, in passing a resolution for the appointment of a committee to prepare a petition to the King; and Dickinson, Johnson, John Rutledge, Jay, and Franklin were chosen by ballot as the members of the committee. The petition, drafted by Dickinson, was reported June 19, taken up for consideration July 4, and the following day agreed to. On the 8th the engrossed copy was signed by the members present. The petition, together with other addresses adopted by the Congress, was entrusted to Richard Penn, to be carried to England and laid before the King. The petition was the last offer of reconciliation made by Congress; and the decision of the question of independence was thought by many to depend upon its reception. Already, in January, before the first petition had been laid before Parliament, the Privy Council had decided that force should be used to suppress the rebellion, and that all persons resisting the King should be proclaimed traitors. The attention of Parliament, however, was immediately taken up with the conciliatory proposals of Chatham, Burke, and Lord North, and the acts restraining the trade of the northern and southern colonies; and the proclamation was not then issued. In the mean time, the British and American forces came into collision at Lexington, Concord, and Bunker Hill, and Congress chose Washington as commander-in-chief of the American army. The news of these proceedings fixed the determination of the King, and he ordered the proclamation to be drawn up. On the 23d of August, the day on which Richard Penn and Arthur Lee were to have presented the "olive branch" petition to Lord Dartmouth, the proclamation was issued. The petition was handed to Lord Dartmouth September 1, but the colonial representa-

tives were refused an audience with the King, and were finally informed that no answer would be given. The news of the rejection of the petition reached America October 31. November 3, Congress recommended the people of New Hampshire to establish a form of government. December 6, a formal report on the proclamation was agreed to, in which, after repudiating the charge of treason, Congress declared that "whatever punishment shall be inflicted upon any persons in the power of our enemies, for favouring, aiding, or abetting the cause of American liberty, shall be retaliated in the same kind, and the same degree, upon those in our power, who have favoured, aided, or abetted, or shall favour, aid, or abet the system of ministerial oppression."

REFERENCES. — *Text* in Force's *American Archives*, Fourth Series, III., 240, 241. The report of December 6 is in the *Journals of Congress* (ed. 1800, I., 263–265; Ford's ed., III., 409–412). The best account of events is in Frothingham's *Rise of the Republic*, chap. 10. The petition of July 8 is in MacDonald's *Select Charters*, No. 77.

GEORGE R.

Whereas many of our subjects in divers parts of our Colonies and Plantations in *North America*, misled by dangerous and ill designing men, and forgetting the allegiance which they owe to the power that has protected and supported them; after various disorderly acts committed in disturbance of the publick peace, to the obstruction of lawful commerce, and to the oppression of our loyal subjects carrying on the same; have at length proceeded to open and avowed rebellion, by arraying themselves in a hostile manner, to withstand the execution of the law, and traitorously preparing, ordering and levying war against us: And whereas, there is reason to apprehend that such rebellion hath been much promoted and encouraged by the traitorous correspondence, counsels and comfort of divers wicked and desperate persons within this realm: To the end therefore, that none of our subjects may neglect or violate their duty through ignorance thereof, or through any doubt of the protection which the law will afford to their loyalty and zeal, we have thought fit, by and with the advice of our Privy Council, to issue our Royal Proclamation, hereby declaring, that not only all our Officers, civil and military, are obliged to exert their utmost endeavours to suppress such rebellion, and to bring the traitors to justice, but that all our subjects of this Realm, and the dominions thereunto belonging, are bound by law to be aiding and assisting in the suppression of such rebellion, and to disclose and make known all traitorous conspiracies and attempts against us, our crown and dignity; and

we do accordingly strictly charge and command all our Officers, as well civil as military, and all others our obedient and loyal subjects, to use their utmost endeavours to withstand and suppress such rebellion, and to disclose and make known all treasons and traitorous conspiracies which they shall know to be against us, our crown and dignity; and for that purpose, that they transmit to one of our principal Secretaries of State, or other proper officer, due and full information of all persons who shall be found carrying on correspondence with, or in any manner or degree aiding or abetting the persons now in open arms and rebellion against our Government, within any of our Colonies and Plantations in *North America*, in order to bring to condign punishment the authors, prepetrators, and abetters of such traitorous designs.

Given at our Court at *St. James's* the twenty-third day of *August*, one thousand seven hundred and seventy-five, in the fifteenth year of our reign.

God save the King.

No. 50. Declaration of Independence

July 4, 1776

June 7, 1776, Richard Henry Lee of Virginia submitted to the Continental Congress three resolutions, the first of which declared "That these United Colonies are, and of right ought to be, free and independent States, that they are absolved from all allegiance to the British Crown, and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved." The resolutions were seconded by John Adams, and on the 10th a committee, consisting of Thomas Jefferson, John Adams, Benjamin Franklin, Roger Sherman, and Robert R. Livingstone, was appointed "to prepare a declaration to the effect of the said first resolution." On the 28th the committee brought in a draft of a declaration of independence. The resolution previously submitted was adopted July 2; on the 4th the Declaration of Independence was agreed to, and signed by John Hancock as president of the Congress. Congress directed that copies be sent "to the several Assemblies, Conventions, and Committees or Councils of Safety, and to the several commanding officers of the continental troops; that it be proclaimed in each of the United States, and at the head of the army." The members of Congress signed the Declaration August 2.

References. — *Text* in *Revised Statutes* (ed. 1878). There are many reprints. A facsimile of the engrossed copy is in Force's *American Archives*,

series V., vol. I., at p. 1597; a printed copy showing Jefferson's original draft and the changes made by Congress is in the *Madison Papers*, I., 19–27. The *Journal of Congress* (ed. 1800, II.; Ford's ed., V.) gives the proceedings; Jefferson's notes of the debates are in the *Madison Papers*, I. Bancroft's *United States* (ed. 1860), VIII., chaps. 69, 70, gives abstracts of speeches in Congress, and a discussion of the Declaration itself.

In Congress, July 4, 1776,

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA,

WHEN in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. — Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former

Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States, for that purpose obstructing the Laws of Naturalization of Foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our People, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislature.

He has affected to render the Military independent of and superior to the Civil Power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws: giving his Assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from Punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offences:

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

For suspending our own Legislature, and declaring themselves invested with Power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for

Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free People.

Nor have We been wanting in attention to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

JOHN HANCOCK.[1]

[1] The remaining signatures are omitted. — Ed.

No. 51. Articles of Confederation

November 15, 1777

JUNE 11, 1776, the Continental Congress resolved "that a committee be appointed to prepare and digest the form of a confederation to be entered into between these colonies." The committee, consisting of one member from each of the colonies except New Jersey, was appointed the following day. A plan drawn up by John Dickinson of Delaware, a member of the committee, was reported July 12, considered in Committee of the Whole House July 22, and debated at intervals until Nov. 15, 1777, when, with some amendments, it was agreed to. Congress directed that "these articles shall be proposed to the legislatures of all the United States, to be considered, and if approved of by them, they are advised to authorize their delegates to ratify the same in the Congress of the United States; which being done, the same shall become conclusive." A form of circular letter to accompany the Articles was adopted Nov. 17; June 26, 1778, a form of ratification was agreed upon. The delegates from the several States signed the Articles as follows: New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, Pennsylvania, Virginia and South Carolina, July 9, 1778; North Carolina, July 21, 1778; Georgia, July 24, 1778; New Jersey, Nov. 26, 1778; Delaware, May 5, 1779; Maryland, March 1, 1781. Congress met under the Articles March 2, 1781.

REFERENCES. — *Text* in *Revised Statutes* (ed. 1878). There are numerous reprints. The proceedings of Congress are in the *Journal* (ed. 1800, II.–VII.; Ford's ed., V.–IX.); Jefferson's notes are in Elliot's *Debates* (ed. 1836), I., 100–107. The circular letter accompanying the Articles is also in Elliot, I., 99, 100. Story's *Commentaries* (ed. 1833), I., 217–223, gives an analysis of the Articles.

To all to whom these Presents shall come, we the undersigned Delegates of the States affixed to our Names send greeting.

Whereas the Delegates of the United States of America in Congress assembled did on the fifteenth day of November in the year of our Lord One Thousand Seven Hundred and Seventy-seven, and in the Second Year of the Independence of America agree to certain articles of Confederation and perpetual Union between the States of Newhampshire, Massachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia in the Words following, viz.

"*Articles of Confederation and perpetual Union between the States of Newhamshire, Massachusetts-bay, Rhodeisland and*

Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia.

ARTICLE I. THE stile of this confederacy shall be "The United States of America."

ARTICLE II. EACH State retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.

ARTICLE III. THE said States hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

ARTICLE IV. THE better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other state of which the owner is an inhabitant; provided also that no imposition, duties or restriction shall be laid by any State, on the property of the United States, or either of them.

IF any Person guilty of, or charged with treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall upon demand of the Governor or Executive power, of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offence.

Full faith and credit shall be given in each of these States to the records, acts and judicial proceedings of the courts and magistrates of every other State.

ARTICLE V. FOR the more convenient management of the general interest of the United States, delegates shall be annually appointed in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State, to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

No State shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit receives any salary, fees or emolument of any kind.

Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

In determining questions in the United States, in Congress assembled, each State shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court, or place out of Congress, and the members of Congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

ARTICLE VI. No State without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any king, prince or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office or title of any kind whatever from any king, prince or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties, which may interfere

with any stipulations in treaties, entered into by the United States in Congress assembled, with any king, prince or state, in pursuance of any treaties already proposed by Congress, to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any State, except such number only, as shall be deemed necessary by the United States in Congress assembled, for the defence of such State, or its trade; nor shall any body of forces be kept up by any State, in time of peace, except such number only, as in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such State; but every State shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutered, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No State shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay, till the United States in Congress assembled can be consulted: nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the kingdom or state and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

Article VII. When land-forces are raised by any State for the common defence, all officers of or under the rank of colonel, shall be appointed by the Legislature of each State respectively by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

Article VIII. All charges of war, and all other expenses that

shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled, shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the Legislatures of the several States within the time agreed upon by the United States in Congress assembled.

Article IX. The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article — of sending and receiving ambassadors — entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever — of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated — of granting letters of marque and reprisal in times of peace — appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction or any other cause whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority or lawful agent of any State in controversy with another shall present a petition to Congress, stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legisla-

tive or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names as Congress shall direct, shall in the presence of Congress be drawn out by lot, and the persons whose names shall be so drawn or any five or them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without showing reasons, which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the Secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath to be administered by one of the judges of the supreme or superior court of the State, where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favour, affection or hope of reward:" provided also that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdiction as they may respect such lands, and the States which passed such grants are adjusted, the said grants or either of them being at the

same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the Congress of the United States, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

THE United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States — fixing the standard of weights and measures throughout the United States — regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated — establishing and regulating post-offices from one State to another, throughout all the United States, and exacting such postage on the papers passing thro' the same as may be requisite to defray the expenses of the said office — appointing all officers of the land forces, in the service of the United States, excepting regimental officers — appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States — making rules for the government and regulation of the said land and naval forces, and directing their operations.

THE United States in Congress assembled shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated "a Committee of the States," and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for manageing the general affairs of the United States under their direction — to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses — to borrow money, or emit bills on the credit of the United States, transmitting every half year to the respective States an account of the sums of money so borrowed or emitted, — to build and equip a navy — to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State; which requisition

shall be binding, and thereupon the Legislature of each State shall appoint the regimental officers, raise the men and cloath, arm and equip them in a soldier like manner, at the expense of the United States; and the officers and men so cloathed, armed and equipped shall march to the place appointed, and within the time agreed on by the United States in Congress assembled: but if the United States in Congress assembled shall, on consideration of circumstances judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, cloathed, armed and equipped in the same manner as the quota of such State, unless the legislature of such State shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise officer, cloath, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so cloathed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

The United States in Congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine States assent to the same: nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of a majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances or military operations, as in their judgment require secresy; and the yeas and nays of the delegates of each State on

any question shall be entered on the journal, when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the Legislatures of the several States.

ARTICLE X. THE committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of nine States, shall from time to time think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine States in the Congress of the United States assembled is requisite.

ARTICLE XI. Canada acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

ARTICLE XII. ALL bills of credit emitted, monies borrowed and debts contracted by, or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States, and the public faith are hereby solemnly pledged.

ARTICLE XIII. EVERY State shall abide by the determinations of the United States in Congress assembled, on all questions which by this confederation are submitted to them. And the articles of this confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislatures of every State.

And whereas it hath pleased the Great Governor of the World to incline the hearts of the Legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual union. Know ye that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name

and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained: and we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions, which by the said confederation are submitted to them. And that the articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual.

In witness whereof we have hereunto set our hands in Congress. Done at Philadelphia in the State of Pennsylvania the ninth day of July in the year of our Lord one thousand seven hundred and seventy-eight, and in the third year of the independence of America.[1]

No. 52. Treaty of Paris

September 3, 1783

Cornwallis surrendered Oct. 19, 1781. News of the surrender reached Versailles Nov. 19, and London Nov. 25, two days before the meeting of Parliament. March 5, 1782, Parliament passed an act enabling the King to make peace or a truce until July 1, 1783. On the 20th Lord North resigned, and the Rockingham ministry came into power, to be followed in July by the Shelburne ministry. England had the task of making peace with America, France, Holland, and Spain, a task which was further complicated by the existence of alliances between France and America and France and Spain, and the hostility of Spain to the United States. Notwithstanding instructions from Congress "to be guided by the wishes of the French court," the American commissioners decided to enter into separate negotiations with Great Britain. April 15, 1782, Franklin received from Lord Shelburne the first communication relative to a treaty. A provisional treaty was signed at Paris Nov. 30, 1782, a cessation of hostilities being declared Jan. 20, 1783. The definitive treaty, in the same terms as the provisional articles, was not signed until Sept. 3, 1783, the interval being taken up with the adjustment of peace between England and France. Congress ratified the treaty Jan. 14, 1784.

References. — *Text* in *U. S. Stat. at Large*, VIII., 80–83. The diplomatic correspondence is given by Wharton, *Dipl. Corres. of the Amer. Rev.*, V., VI., and Sparks, *Dipl. Corres.*, VI., VII. The course of the negotiations

[1] The names of the signers are omitted.—Ed.

is followed in detail by Wharton, *Digest of Intern. Law* (ed. 1887), III., 892–956; compare John Jay, in Winsor's *Narrative and Critical History*, VII., 89–169, and correspondence of William Jay and J. Q. Adams in *Mag. of Amer. Hist.*, III., 39–45. There are valuable notes in Winsor, *op. cit.*, VII., 170–184, on fisheries and northern boundaries under the treaty. Later correspondence regarding the non-execution of certain provisions of the treaty relative to loyalists' estates and the rights of British creditors in United States courts, is in *Amer. State Papers, Foreign Relations*, I., 188–243.

* * * * * * * *

Article I.

His Britannic Majesty acknowledges the said United States, viz. New-Hampshire, Massachusetts-Bay, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia, to be free, sovereign and independent States; that he treats with them as such; and for himself, his heirs and successors, relinquishes all claims to the government, propriety and territorial rights of the same, and every part thereof.

Article II.

And that all disputes which might arise in future, on the subject of the boundaries of the said United States, may be prevented, it is hereby agreed and declared, that the following are, and shall be their boundaries, viz. From the north-west angle of Nova-Scotia, viz. that angle which is formed by a line, drawn due north from the source of St. Croix river to the Highlands; along the said Highlands which divide those rivers, that empty themselves into the river St. Lawrence, from those which fall into the Atlantic ocean, to the northwesternmost head of Connecticut river, thence down along the middle of that river, to the forty-fifth degree of north latitude; from thence, by a line due west on said latitude, until it strikes the river Iroquois or Cataraquy; thence along the middle of said river into lake Ontario, through the middle of said lake until it strikes the communication by water between that lake and lake Erie; thence along the middle of said communication into lake Erie, through

the middle of said lake until it arrives at the water-communication between that lake and lake Huron; thence along the middle of said water-communication into the lake Huron; thence through the middle of said lake to the water-communication between that lake and lake Superior; thence through lake Superior northward of the isles Royal and Phelipeaux, to the Long Lake; thence through the middle of said Long Lake, and the water-communication between it and the Lake of the Woods, to the said Lake of the Woods; thence through the said lake to the most northwestern point thereof, and from thence on a due west course to the river Mississippi; thence by a line to be drawn along the middle of the said river Mississippi until it shall intersect the northernmost part of the thirty-first degree of north latitude. South by a line to be drawn due east from the determination of the line last mentioned, in the latitude of thirty-one degrees north of the Equator, to the middle of the river Apalachicola or Catahouche; thence along the middle thereof to its junction with the Flint river; thence strait to the head of St. Mary's river; and thence down along the middle of St. Mary's river to the Atlantic ocean. East by a line to be drawn along the middle of the river St. Croix, from its mouth in the Bay of Fundy to its source, and from its source directly north to the aforesaid Highlands which divide the rivers that fall into the Atlantic ocean from those which fall into the river St. Lawrence; comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova-Scotia on the one part, and East-Florida on the other, shall respectively touch the Bay of Fundy and the Atlantic ocean, excepting such islands as now are, or heretofore have been within the limits of the said province of Nova-Scotia.

Article III.

It is agreed that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand Bank, and on all the other banks of Newfoundland; also in the gulph of St. Lawrence, and at all other places in the sea, where the inhabitants of both countries used at any time

heretofore to fish; and also that the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use (but not to dry or cure the same on that island); and also on the coasts, bays and creeks of all other of his Britannic Majesty's dominions in America; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbours and creeks of Nova-Scotia, Magdalen islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same or either of them shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement, without a previous agreement for that purpose with the inhabitants, proprietors or possessors of the ground.

Article IV.

It is agreed that creditors on either side, shall meet with no lawful impediment to the recovery of the full value in sterling money, of all bona fide debts heretofore contracted.

Article V.

It is agreed that the Congress shall earnestly recommend it to the legislatures of the respective states, to provide for the restitution of all estates, rights and properties, which have been confiscated, belonging to real British subjects, and also of the estates, rights and properties of persons resident in districts in the possession of his Majesty's arms, and who have not borne arms against the said United States. And that persons of any other description shall have free liberty to go to any part or parts of any of the thirteen United States, and therein to remain twelve months, unmolested in their endeavours to obtain the restitution of such of their estates, rights and properties, as may have been confiscated; and that Congress shall also earnestly recommend to the several states a reconsideration and revision of all acts or laws regarding the premises, so as to render the said laws or acts perfectly consistent, not only with justice and equity, but with that spirit of conciliation, which on the return of the blessings of peace should universally prevail. And that Congress shall also

earnestly recommend to the several states, that the estates, rights and properties of such last mentioned persons, shall be restored to them, they refunding to any persons who may be now in possession, the bona fide price (where any has been given) which such persons may have paid on purchasing any of the said lands, rights or properties, since the confiscation. And it is agreed, that all persons who have any interest in confiscated lands, either by debts, marriage settlements, or otherwise, shall meet with no lawful impediment in the prosecution of their just rights.

Article VI.

That there shall be no future confiscations made, nor any prosecutions commenced against any person or persons for, or by reason of the part which he or they may have taken in the present war; and that no person shall, on that account, suffer any future loss or damage, either in his person, liberty or property; and that those who may be in confinement on such charges, at the time of the ratification of the treaty in America, shall be immediately set at liberty, and the prosecutions so commenced be discontinued.

Article VII.

There shall be a firm and perpetual peace between his Britannic Majesty and the said States, and between the subjects of the one and the citizens of the other, wherefore all hostilities, both by sea and land, shall from henceforth cease: all prisoners on both sides shall be set at liberty, and his Britannic Majesty shall, with all convenient speed, and without causing any destruction, or carrying away any negroes or other property of the American inhabitants, withdraw all his armies, garrisons and fleets from the said United States, and from every port, place and harbour within the same; leaving in all fortifications the American artillery that may be therein; and shall also order and cause all archives, records, deeds and papers, belonging to any of the said states, or their citizens, which in the course of the war may have fallen into the hands of his officers, to be forthwith restored and delivered to the proper states and persons to whom they belong.

Article VIII.

The navigation of the river Mississippi, from its source to the ocean, shall forever remain free and open to the subjects of Great-Britain, and the citizens of the United States.

Article IX.

In case it should so happen that any place or territory belonging to Great-Britain or to the United States, should have been conquered by the arms of either from the other, before the arrival of the said provisional articles in America, it is agreed, that the same shall be restored without difficulty, and without requiring any compensation.[1]

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No. 53. Ordinance of 1787

July 13, 1787

March 1, 1784, the Virginia delegates in Congress, in pursuance of an act of the general assembly of that State, passed Dec. 20, 1783, executed a deed of cession to the United States of the northwestern territory claimed by Virginia; and by an act of April 23 Congress provided a temporary government. During the next three years various plans for the government of the territory were brought forward. July 11, 1787, a committee, of which Nathan Dane of Massachusetts was chairman, reported an ordinance for the government of the territory of the United States northwest of the Ohio River; on the 12th a clause forbidding slavery in the territory was added as an amendment; and on the 13th the bill became a law. By act of Aug. 7, 1789, the Congress of the United States continued the ordinance in effect; and the act of May 25, 1790, extended the main provisions of the ordinance, except the anti-slavery section, to territory south of the Ohio River.

References. — *Text* in *Revised Statutes* (ed. 1878). The act of the Virginia assembly and the deed of cession are in Poore's *Federal and State Constitutions*, I., 427, 428. The act of 1784 is in the *Journal of Congress* (ed. 1800), IX., 109, 110; Jefferson's plan is in Randall's *Jefferson*, I., 397–399. The detailed history of the ordinance of 1787, and the part played by Manasseh Cutler, were first shown by W. F. Poole, in *North Amer. Rev.*,

[1] Signed: "D. Hartley, John Adams, B. Franklin, John Jay." — Ed.

CXXII., 229–265; the ordinance proposed in May, 1787, is printed by Poole, *ib.*, 242–244. A fuller account is in the *Life, Journals and Correspondence of Manasseh Cutler*, I., chap. 8. Barrett's *Evolution of the Ordinance of 1787* gives an account of early plans, with maps. See also *Life and Public Services of Arthur St. Clair*, II. (*cf.* review in *Nation*, XXXIV., 383–385).

An Ordinance for the government of the territory of the United States northwest of the river Ohio.

Section 1. *Be it ordained by the United States in Congress assembled*, That the said territory, for the purposes of temporary government, be one district, subject, however, to be divided into two districts, as future circumstances may, in the opinion of Congress, make it expedient.

[Section 2 relates to the descent and distribution of estates.]

Sec. 3. *Be it ordained by the authority aforesaid*, That there shall be appointed, from time to time, by Congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the district, and have a freehold estate therein in one thousand acres of land, while in the exercise of his office.

Sec. 4. There shall be appointed from time to time, by Congress, a secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein, in five hundred acres of land, while in the exercise of his office. It shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department, and transmit authentic copies of such acts and proceedings every six months to the Secretary of Congress. There shall also be appointed a court, to consist of three judges, any two of whom to form a court, who shall have a common-law jurisdiction, and reside in the district, and have each therein a freehold estate, in five hundred acres of land, while in the exercise of their offices; and their commissions shall continue in force during good behavior.

Sec. 5. The governor and judges, or a majority of them, shall adopt and publish in the district such laws of the original States, criminal and civil, as may be necessary, and best suited to the

circumstances of the district, and report them to Congress from time to time, which laws shall be in force in the district until the organization of the general assembly therein, unless disapproved of by Congress; but afterwards the legislature shall have authority to alter them as they shall think fit.

SEC. 6. The governor, for the time being, shall be commander-in-chief of the militia, appoint and commission all officers in the same below the rank of general officers; all general officers shall be appointed and commissioned by Congress.

SEC. 7. Previous to the organization of the general assembly the governor shall appoint such magistrates, and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order in the same. After the general assembly shall be organized the powers and duties of the magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

SEC. 8. For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed, from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

SEC. 9. So soon as there shall be five thousand free male inhabitants, of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the general assembly: *Provided*, That for every five hundred free male inhabitants there shall be one representative, and so on, progressively, with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to twenty-five; after which the number and proportion of representatives shall be regulated by the legislature: *Provided*, That no person be eligible or qualified to act as a representative, unless he shall have been a citizen of one

of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years; and, in either case, shall likewise hold in his own right, in fee-simple, two hundred acres of land within the same: *Provided, also*, That a freehold in fifty acres of land in the district, having been a citizen of one of the States, and being resident in the district, or the like freehold and two years' residence in the district, shall be necessary to qualify a man as an elector of a representative.

SEC. 10. The representatives thus elected shall serve for the term of two years; and in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township, for which he was a member, to elect another in his stead, to serve for the residue of the term.

SEC. 11. The general assembly, or legislature, shall consist of the governor, legislative council, and a house of representatives. The legislative council shall consist of five members, to continue in office five years, unless sooner removed by Congress; any three of whom to be a quorum; and the members of the council shall be nominated and appointed in the following manner, to wit: As soon as representatives shall be elected the governor shall appoint a time and place for them to meet together, and when met they shall nominate ten persons, residents in the district, and each possessed of a freehold in five hundred acres of land, and return their names to Congress, five of whom Congress shall appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to Congress, one of whom Congress shall appoint and commission for the residue of the term; and every five years, four months at least before the expiration of the time of service of the members of council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to Congress, five of whom Congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council, and house of representatives shall have authority to make laws in all cases for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills, having passed by a majority

in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill, or legislative act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the general assembly when, in his opinion, it shall be expedient.

Sec. 12. [The governor and other officers to take an oath]. As soon as a legislature shall be formed in the district, the council and house assembled, in one room, shall have authority, by joint ballot, to elect a delegate to Congress who shall have a seat in Congress, with a right of debating, but not of voting, during this temporary government.

Sec. 13. And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions, are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory; to provide, also, for the establishment of States, and permanent government therein, and for their admission to a share in the Federal councils on an equal footing with the original States, at as early periods as may be consistent with the general interest:

Sec. 14. It is hereby ordained and declared, by the authority aforesaid, that the following articles shall be considered as articles of compact, between the original States and the people and States in the said territory, and forever remain unalterable, unless by common consent, to wit:

Article I.

No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship, or religious sentiments, in the said territories.

Article II.

The inhabitants of the said territory shall always be entitled to the benefits of the writ of *habeas corpus*, and of the trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of common law. All persons shall be bailable, unless for capital offences,

where the proof shall be evident, or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the land, and should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts, or engagements, *bona fide*, and without fraud previously formed.

ARTICLE III.

Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

ARTICLE IV.

The said territory, and the States which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the Articles of Confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in Congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the Federal debts, contracted, or to be contracted, and a proportional part of the expenses of government to be apportioned on them by Congress, according to the same common rule and measure by which apportionments thereof shall be made on the other

States; and the taxes for paying their proportion shall be laid and levied by the authority and direction of the legislatures of the district, or districts, or new States, as in the original States, within the time agreed upon by the United States in Congress assembled. The legislatures of those districts, or new States, shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the *bona fide* purchasers. No tax shall be imposed on lands the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and Saint Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory as to the citizens of the United States, and those of any other States that may be admitted into the confederacy, without any tax, impost, or duty therefor.

Article V.

There shall be formed in the said territory not less than three nor more than five States; and the boundaries of the States, as soon as Virginia shall alter her act of cession and consent to the same, shall become fixed and established as follows, to wit: The western State, in the said territory, shall be bounded by the Mississippi, the Ohio, and the Wabash Rivers; a direct line drawn from the Wabash and Post Vincents, due north, to the territorial line between the United States and Canada; and by the said territorial line to the Lake of the Woods and Mississippi. The middle State shall be bounded by the said direct line, the Wabash from Post Vincents to the Ohio, by the Ohio, by a direct line drawn due north from the mouth of the Great Miami to the said territorial line, and by the said territorial line. The eastern State shall be bounded by the last-mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: *Provided, however,* And it is further understood and declared, that the boundaries of these three States shall be subject so far to be altered, that, if Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of the said territory which

lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. And whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States, in all respects whatever; and shall be at liberty to form a permanent constitution and State government: *Provided*, The constitution and government, so to be formed, shall be republican, and in conformity to the principles contained in these articles, and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand.

Article VI.

There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: *Provided always*, That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid.

* * * * * * * *

No. 54. Constitution of the United States

September 17, 1787

In January, 1786, the legislature of Virginia adopted a resolution providing for the appointment of commissioners to confer with representatives from other States in regard to the commercial interests of the United States. In response to this resolution, delegates from New York, New Jersey, Pennsylvania, Delaware, and Virginia met Sept. 1, and reported in favor of a convention of representatives from all the States, to meet at Philadelphia in May following, to consider what further provisions were needed "to make the Constitution of the Federal Government adequate to the exigencies of the Union." A resolution favoring a convention was adopted by Congress, Feb. 21, 1787. The convention was called for May 14; May 25, seven States being represented, George Washington was chosen president, and considera-

tion of the proposed constitution was begun. July 24 the provisions as agreed upon were sent to a Committee of Detail to be embodied in a formal constitution. The committee reported Aug. 6; Sept. 8 a Committee of Style was appointed; on the 15th the amended form of constitution was agreed to, and on the 17th signed by all but three of the delegates present. The constitution was transmitted to Congress with an explanatory letter, and a resolution indicating the way in which the proposed government should be put into operation. On the 28th of September Congress transmitted the constitution, with the letter and resolution, to the State legislatures for submission to a convention of delegates in each State. The States ratified the constitution as follows: Delaware, Dec. 7; Pennsylvania, Dec. 12; New Jersey, Dec. 18, 1787; Georgia, Jan. 2; Connecticut, Jan. 9; Massachusetts, Feb. 7; Maryland, April 28; South Carolina, May 23; New Hampshire, June 21; Virginia, June 25; New York, July 26, 1788; North Carolina, Nov. 21, 1789; Rhode Island, May 29, 1790.

REFERENCES. — Official *text* in *Revised Statutes* (ed. 1878). There are many reprints. The text in the Revised Statutes is accompanied by references to judicial decisions and an elaborate analytical index. The *Journal* of the convention was printed at Boston, 1819; it is also in Elliot's *Debates* (ed. 1836), I., 176–348. Madison's notes of the debates are in the *Madison Papers*, II., III., and in Elliot; for Yates's minutes, Elliot, I., 439–515. The various plans submitted are mentioned in Madison's notes and in the *Journal*. The resolution of Sept. 17, the accompanying letter to Congress, and the resolution of Congress, Sept. 28, are in Elliot, I., 52, 53; texts of the ratifications of the States, *ib.*, I., 349–375. There is a brief history of the amendments to the constitution in *Lalor's Cyclopædia*, I., 607–610. The classical exposition of the constitution is the *Federalist*, of which there are numerous editions: Dawson's "university edition" has an elaborate analysis. On the sources of the constitution, Johnston, in *New Princeton Rev., IV.*, 175–190; Robinson, in *Annals of the Amer. Acad. of Polit. and Soc. Science* I., 203–243; Stevens, *Sources of the Constitution of the United States*.

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

ARTICLE I.

SECTION. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION. 2.[1] The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

SECTION. 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall

[1] The numbers prefixed to the paragraphs in the Revised Statutes are omitted. — ED.

be vacated at the Expiration of the second year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section. 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section. 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority

of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

SECTION. 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

SECTION. 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after

such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION. 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the Credit of the United States;

To regulate Commerçe with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and Punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; — And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

SECTION. 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or Duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or expost facto Law shall be passed.

No Capitation, or other direct, tax shall be laid, unless in

Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

SECTION. 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of Delay.

ARTICLE II.

SECTION. 1. The executive Power shall be vested in a President

of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The electors shall meet in their respective States, and vote by ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two-thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice-President.[1]

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

[1] This paragraph was superseded by the 12th Article of the Amendments. — Ed.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation, or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation: — "I do solemnly swear (or "affirm) that I will faithfully execute the Office of President of "the United States, and will to the best of my Ability, preserve, "protect and defend the Constitution of the United States."

SECTION. 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be estab-

lished by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

SECTION. 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

SECTION. 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE III.

SECTION. 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

SECTION. 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; — to all Cases affecting Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction; — to Controversies to which the United States shall be a Party; — to Controversies between two or more States; — between a State and Citizens of another State; — between Citizens of different States, — between Citizens of the same State claiming

Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION. 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

ARTICLE IV.

SECTION. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

SECTION. 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or

Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

SECTION. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

SECTION. 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

ARTICLE VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Article VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth **In Witness** whereof We have hereunto subscribed our Names,

G°. WASHINGTON —

Presidt, and Deputy from Virginia [1]

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION.[2]

Article I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

[1] The remaining signatures are omitted. — Ed.

[2] For the Thirteenth, Fourteenth and Fifteenth Amendments, see *post*, Nos. 144, 161, and 167.

Article II.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Article III.

No soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Article IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or in public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Article VI.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be con-

fronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

Article VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Article VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article IX.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.[1]

Article XI.

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another state, or by Citizens or Subjects of any Foreign State.[2]

Article XII.

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they

[1] The first ten amendments went into effect Nov. 3, 1791. — Ed.

[2] In effect Jan. 8, 1798. — Ed.

shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; — The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; — The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.[1]

[1] In effect Sept. 25, 1804. — Ed.

No. 55. Hamilton's First Report on Public Credit

January 9, 1790

August 28, 1789, a memorial of certain public creditors of Pennsylvania was presented in the House, "praying the aid and interposition of Congress on behalf of the public creditors, by a permanent appropriation of adequate funds for the punctual payment of the interest of the public debt, or by the adoption of such other means as, in the wisdom of Congress, shall be best calculated to promote the public welfare, and render justice to the individuals who are interested." The memorial was referred to a committee, of which Madison was chairman, which reported on the 10th in favor of deferring action until the next session. On the 21st, after consideration of the report, it was resolved "that this House consider an adequate provision for the support of the public credit, as a matter of high importance to the national honor and prosperity," and "that the Secretary of the Treasury be directed to prepare a plan for that purpose, and to report the same to this House at its next meeting." January 14, 1790, the report on public credit, extracts from which follow, was sent in. The report was taken up Feb. 8, and considered in Committee of the Whole House until March 29, when eight resolutions, agreed to in committee, were reported. The first three resolutions, recommending payment of the foreign debt, together with principal and interest of the domestic debt, were agreed to; the fourth, in favor of the assumption of the State debts, was, by a vote of 29 to 27, recommitted; and the remaining resolutions were laid on the table. On the 30th, the last four resolutions were also recommitted. Consideration of the report in Committee of the Whole House was resumed, and April 26, by a vote of 32 to 18, the committee was discharged "for the present" from further consideration of so much of the report as related to assumption. The opposition to assumption which had by this time developed, strengthened by the arrival of members from North Carolina, bid fair to defeat the scheme. In the meantime, the plan for the location of the national capital had met with difficulty, owing to the rival interests of Pennsylvania and Virginia. Hamilton made use of Jefferson's influence to arrange a compromise, by which, in return for votes in favor of assumption, the capital was to be located at Philadelphia for ten years, and thereafter permanently on the Potomac. Acts of Aug. 4, 10, and 12, 1790, provided for the settlement of the public debt and for increased duties on imports, substantially as suggested by Hamilton.

References. — *Text* in *Amer. State Papers, Finance*, I., 15–25. For the proceedings of the House, see the *Journal*, 1st Cong., 1st and 2d Sess.; for the discussions, see the *Annals of Congress*, or Benton's *Abridgment*, I. The memorial presented Aug. 28 is in the *Annals;* for resolutions and memorials against the act of Aug. 4, 1790, see *Amer. State Papers, Finance*, I., 76–81, 90, 91. A contemporary view of the funding system is in Carey's *Amer*

Museum, VI., 91–98. On Hamilton's financial policy in general, see Lodge's *Hamilton*, chaps. 5, 6. See also Hamilton's *Works* (ed. 1851), V., 454–459; Jefferson's *Works* (ed. 1854), IX., 91–96; Madison's *Writings* (ed. 1865), I., 490–496, 501, 507–522.

TREASURY DEPARTMENT,

January 9, 1790.

The Secretary of the Treasury, in obedience to the resolution of the House of Representatives of the twenty-first day of September last, has, during the recess of Congress, applied himself to the consideration of a proper plan for the support of the public credit, with all the attention which was due to the authority of the House, and to the magnitude of the object. . . .

In the opinion of the Secretary, the wisdom of the House, in giving their explicit sanction to the proposition which has been stated, cannot but be applauded by all who will seriously consider and trace, through their obvious consequences, these plain and undeniable truths:

That exigencies are to be expected to occur, in the affairs of nations, in which there will be a necessity for borrowing;

That loans in times of public danger, especially from foreign war, are found an indispensable resource, even to the wealthiest of them;

And that, in a country which, like this, is possessed of little active wealth, or, in other words, little moneyed capital, the necessity for that resource must, in such emergencies, be proportionably urgent.

And as, on the one hand, the necessity for borrowing, in particular emergencies, cannot be doubted; so, on the other, it is equally evident, that, to be able to borrow upon good terms, it is essential that the credit of a nation should be well established. . . .

If the maintenance of public credit, then, be truly so important, the next inquiry which suggests itself is, By what means it is to be effected? The ready answer to which question is, by good faith: by a punctual performance of contracts. States, like individuals, who observe their engagements, are respected and trusted, while the reverse is the fate of those who pursue an opposite conduct. . . .

While the observance of that good faith, which is the basis of

public credit, is recommended by the strongest inducements of political expediency, it is enforced by considerations of still greater authority. There are arguments for it which rest on the immutable principles of moral obligation. . . .

This reflection derives additional strength from the nature of the debt of the United States. It was the price of liberty. The faith of America has been repeatedly pledged for it, and with solemnities that give peculiar force to the obligation. There is, indeed, reason to regret that it has not hitherto been kept; that the necessities of the war, conspiring with inexperience, in the subjects of finance, produced direct infractions; and that the subsequent period has been a continued scene of negative violation, or non-compliance. But a diminution of this regret arises from the reflection, that the last seven years have exhibited an earnest and uniform effort, on the part of the Government of the Union, to retrieve the national credit, by doing justice to the creditors of the nation; and that the embarrassments of a defective constitution, which defeated this laudable effort, have ceased.

From this evidence of a favorable disposition given by the former Government, the institution of a new one, clothed with powers competent to calling forth the resources of the community, has excited correspondent expectations. A general belief accordingly prevails, that the credit of the United States will quickly be established on the firm foundation of an effectual provision for the existing debt. The influence which this has had at home, is witnessed by the rapid increase that has taken place in the market value of the public securities. From January to November, they rose thirty-three and a third per cent.; and from that period to this time, they have risen fifty per cent. more; and the intelligence from abroad announces effects proportionably favorable to our national credit and consequence. . . .

The advantage to the public creditors, from the increased value of that part of their property which constitutes the public debt, needs no explanation.

But there is a consequence of this, less obvious, though not less true, in which every other citizen is interested. It is a well known fact, that, in countries in which the national debt is properly funded, and an object of established confidence, it answers most of the purposes of money. Transfers of stock or public debt, are

there equivalent to payments in specie; or, in other words, stock, in the principal transactions of business, passes current as specie. The same thing would, in all probability, happen here under the like circumstances. . . .

It ought not, however, to be expected, that the advantages described as likely to result from funding the public debt, would be instantaneous. It might require some time to bring the value of stock to its natural level, and to attach to it that fixed confidence, which is necessary to its quality as money. Yet the late rapid rise of the public securities encourages an expectation that the progress of stock, to the desirable point, will be much more expeditious than could have been foreseen. And as, in the mean time, it will be increasing in value, there is room to conclude that it will, from the outset, answer many of the purposes in contemplation. Particularly, it seems to be probable, that from creditors, who are not themselves necessitous, it will early meet with a ready reception in payment of debts, at its current price.

Having now taken a concise view of the inducements to a proper provision for the public debt, the next inquiry which presents itself is, What ought to be the nature of such a provision? This requires some preliminary discussions.

It is agreed on all hands, that that part of the debt which has been contracted abroad, and is denominated the foreign debt, ought to be provided for according to the precise terms of the contracts relating to it. The discussions which can arise, therefore, will have reference essentially to the domestic part of it, or to that which has been contracted at home. It is to be regretted that there is not the same unanimity of sentiment on this part as on the other.

The Secretary has too much deference for the opinions of every part of the community, not to have observed one, which has more than once made its appearance in the public prints, and which is occasionally to be met with in conversation. It involves this question: Whether a discrimination ought not to be made between original holders of the public securities, and present possessors, by purchase? Those who advocate a discrimination, are for making a full provision for the securities of the former at their nominal value; but contend that the latter ought to receive no more than the cost to them, and the interest. And the idea is

sometimes suggested, of making good the difference to the primitive possessor.

In favor of this scheme, it is alleged, that it would be unreasonable to pay twenty shillings in the pound, to one who had not given more for it than three or four. And it is added, that it would be hard to aggravate the misfortune of the first owner, who, probably, through necessity, parted with his property at so great a loss, by obliging him to contribute to the profit of the person who had speculated on his distresses.

The Secretary, after the most mature reflection on the force of this argument, is induced to reject the doctrine it contains, as equally unjust and impolitic; as highly injurious, even to the original holders of public securities; as ruinous to public credit.

It is inconsistent with justice, because, in the first place, it is a breach of contract — a violation of the rights of a fair purchaser.

The nature of the contract, in its origin, is, that the public will pay the sum expressed in the security, to the first holder or his assignee. The intent in making the security assignable, is, that the proprietor may be able to make use of his property, by selling it for as much as it may be worth in the market, and that the buyer may be safe in the purchase.

Every buyer, therefore, stands exactly in the place of the seller; has the same right with him to the identical sum expressed in the security; and, having acquired that right, by fair purchase, and in conformity to the original agreement and intention of the Government, his claim cannot be disputed, without manifest injustice. . . .

The impolicy of a discrimination results from two considerations: One, that it proceeds upon a principle destructive of that quality of the public debt, or the stock of the nation, which is essential to its capacity for answering the purposes of money, that is, the security of transfer; the other, that, as well on this account as because it includes a breach of faith, it renders property, in the funds, less valuable, consequently, induces lenders to demand a higher premium for what they lend, and produces every other inconvenience of a bad state of public credit.

It will be perceived, at first sight, that the transferable quality

of stock is essential to its operation as money, and that this depends on the idea of complete security to the transferee, and a firm persuasion, that no distinction can, in any circumstances, be made between him and the original proprietor.

The precedent of an invasion of this fundamental principle, would, of course, tend to deprive the community of an advantage with which no temporary saving could bear the least comparison.

And it will as readily be perceived that the same cause would operate a diminution of the value of stock in the hands of the first as well as of every other holder. The price which any man who should incline to purchase, would be willing to give for it, would be in a compound ratio to the immediate profit it afforded, and the chance of the continuance of his profit. If there was supposed to be any hazard of the latter, the risk would be taken into the calculation, and either there would be no purchase at all, or it would be at a proportionably less price. . . .

But there is still a point in view, in which it will appear perhaps even more exceptionable than in either of the former. It would be repugnant to an express provision of the constitution of the United States. This provision is, that "all debts contracted, and engagements entered into, before the adoption of that constitution, shall be as valid against the United States under it, as under the Confederation;" which amounts to a constitutional ratification of the contracts respecting the debt, in the state in which they existed under the confederation. And, resorting to that standard, there can be no doubt that the rights of assignees and original holders must be considered as equal. . . .

The Secretary, concluding that a discrimination between the different classes of creditors of the United States cannot, with propriety, be made, proceeds to examine whether a difference ought to be permitted to remain between them and another description of public creditors — those of the States, individually. The Secretary, after mature reflection on this point, entertains a full conviction, that an assumption of the debts of the particular States by the Union, and a like provision for them, as for those of the Union, will be a measure of sound policy and substantial justice. . . .

There are several reasons, which render it probable that the

situation of the State creditors would be worse than that of the creditors of the Union, if there be not a national assumption of the State debts. Of these it will be sufficient to mention two: one, that a principal branch of revenue is exclusively vested in the Union; the other, that a State must always be checked in the imposition of taxes on articles of consumption, from the want of power to extend the same regulation to the other States, and from the tendency of partial duties to injure its industry and commerce. Should the State creditors stand upon a less eligible footing than the others, it is unnatural to expect they would see with pleasure a provision for them. The influence which their dissatisfaction might have, could not but operate injuriously, both for the creditors and the credit of the United States. Hence it is even the interest of the creditors of the Union, that those of the individual States should be comprehended in a general provision. Any attempt to secure to the former either exclusive or peculiar advantages, would materially hazard their interests. Neither would it be just, that one class of public creditors should be more favored than the other. The objects for which both descriptions of the debt were contracted, are in the main the same. Indeed, a great part of the particular debts of the States has arisen from assumptions by them on account of the Union. And it is most equitable, that there should be the same measure of retribution for all. . . .

There is good reason to conclude, that the impressions of many are more favorable to the claim of the principal, than to that of the interest; at least so far as to produce an opinion, that an inferior provision might suffice for the latter.

But, to the Secretary, this opinion does not appear to be well founded. His investigations of the subject have led him to a conclusion, that the arrears of interest have pretensions at least equal to the principal. . . .

The result of the foregoing discussions is this: That there ought to be no discrimination between the original holders of the debt, and present possessors by purchase. That it is expedient there should be an assumption of the State debts by the Union, and that the arrears of interest should be provided for on an equal footing with the principal.

The next inquiry, in order, towards determining the nature of

a proper provision, respects the quantum of the debt, and the present rates of interest.

The debt of the Union is distinguishable into foreign and domestic.

The foreign debt, as stated in schedule B, amounts to, principal, ...	$10,070,307 00
Bearing an interest of four, and partly an interest of five per cent.	
Arrears of interest to the last of December, 1789	1,640,071 62
Making, together . . .	$11,710,378 62

The domestic debt may be subdivided into liquidated and unliquidated; principal and interest.	
The principal of the liquidated part, as stated in the schedule C, amounts to . . .	$27,383,917 74
Bearing an interest of six per cent.	
The arrears of interest, as stated in the schedule D, to the end of 1790, amount to . .	13,030,168 20
Making, together . . .	$40,414,085 94

The unliquidated part of the domestic debt, which consists chiefly of the continental bills of credit, is not ascertained, but may be estimated at 2,000,000 dollars.

These several sums constitute the whole of the debt of the United States, amounting together to $54,124,464 56. That of the individual States is not equally well ascertained. . . . The Secretary, however, presumes that the total amount may be safely stated at twenty-five millions of dollars, principal and interest. . . .

On the supposition that the arrears of interest ought to be provided for on the same terms with the principal, the annual amount of the interest, which, at the existing rates, would be payable on the entire mass of the public debt, would be —

On the foreign debt, computing the interest on the principal, as it stands, and allowing four per cent. on the arrears of interest, . . .	$542,599 66
On the domestic debt, including that of the States	4,044,845 15
Making, together, . . .	$4,587,444 81

The interesting problem now occurs: Is it in the power of the United States, consistently with those prudential considerations which ought not to be overlooked, to make a provision equal to the purpose of funding the whole debt, at the rates of interest which it now bears, in addition to the sum which will be necessary for the current service of the Government?

The Secretary will not say that such a provision would exceed the abilities of the country; but he is clearly of opinion that, to make it, would require the extension of taxation to a degree, and to objects, which the true interest of the public creditors forbids. It is therefore to be hoped, and even to be expected, that they will cheerfully concur in such modifications of their claims, on fair and equitable principles, as will facilitate to the Government an arrangement substantial, durable, and satisfactory to the community. . . .

Probabilities are always a rational ground of contract. The Secretary conceives, that there is good reason to believe, if effectual measures are taken to establish public credit, that the Government rate of interest in the United States will, in a very short time, fall at least as low as five per cent.; and that, in a period not exceeding twenty years, it will sink still lower, probably to four. There are two principal causes which will be likely to produce this effect; one, the low rate of interest in Europe; the other, the increase of the moneyed capital of the nation, by the funding of the public debt. . . .

Premising these things, the Secretary submits to the House the expediency of proposing a loan, to the full amount of the debt, as well of the particular States as of the Union, upon the following terms:

First. That, for every hundred dollars subscribed, payable in the debt, (as well interest as principal) the subscriber be entitled, at his option, either to have two-thirds funded at an annuity or yearly interest of six per cent., redeemable at the pleasure of the

Government, by payment of the principal, and to receive the other third in lands in the western territory, at the rate of twenty cents per acre; or, to have the whole sum funded at an annuity or yearly interest of four per cent., irredeemable by any payment exceeding five dollars per annum, on account both of principal and interest, and to receive, as a compensation for the reduction of interest, fifteen dollars and eighty cents, payable in lands, as in the preceding case; or, to have sixty-six dollars and two-thirds of a dollar funded immediately, at an annuity or yearly interest of six per cent., irredeemable by any payment exceeding four dollars and two-thirds of a dollar per annum, on account both of principal and interest, and to have, at the end of ten years, twenty-six dollars and eighty-eight cents funded at the like interest and rate of redemption; or, to have an annuity, for the remainder of life, upon the contingency of fixing to a given age, not less distant than ten years, computing interest at four per cent.; or, to have an annuity, for the remainder of life, upon the contingency of the survivership of the youngest of two persons, computing interest in this case also at four per cent.

In addition to the foregoing loan, payable wholly in the debt, the Secretary would propose that one should be opened for ten millions of dollars, on the following plan:

That, for every hundred dollars subscribed, payable one half in specie, and the other half in debt, (as well principal as interest) the subscriber be entitled to an annuity or yearly interest of five per cent., irredeemable by any payment exceeding six dollars per annum, on account both of principal and interest. [The details of these various plans are then discussed at length.]

In order to keep up a due circulation of money, it will be expedient that the interest of the debt should be paid quarter-yearly. . . .

The remaining part of the task to be performed is to take a view of the means of providing for the debt, according to the modification of it which is proposed. . . .

. . . to pay the interest of the foreign debt, and to pay four per cent. on the whole of the domestic debt, principal and interest, forming a new capital, will require a yearly income of $2,239,163,09 — the sum which, in the opinion of the Secretary, ought now to be provided, in addition to what the current service will require. . . .

With regard to the instalments of the foreign debt, these, in the opinion of the Secretary, ought to be paid by new loans abroad. Could funds be conveniently spared from other exigencies, for paying them, the United States could ill bear the drain of cash, at the present juncture, which the measure would be likely to occasion.

But to the sum which has been stated for payment of the interest, must be added a provision for the current service. This the Secretary estimates at six hundred thousand dollars, making, with the amount of the interest, two millions eight hundred and thirty-nine thousand one hundred and sixty-three dollars and nine cents.

This sum may, in the opinion of the Secretary, be obtained from the present duties on imports and tonnage, with the additions which, without any possible disadvantage, either to trade or agriculture, may be made on wines, spirits, (including those distilled within the United States) teas and coffee. [A discussion of this point, with a detailed statement of the proposed duties, follows.]

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No. 56. Proclamation of Neutrality

April 22, 1793

THE declaration of war made by France against Great Britain and Holland reached the United States early in April, 1793. Washington was at Mount Vernon. April 12 he addressed letters to the Secretaries of State and of the Treasury, "requesting their immediate attention to the question of privateering"; on the 17th he reached Philadelphia. On the following day Washington sent to the members of the cabinet a circular letter containing thirteen questions, framed by Hamilton, relative to the proper conduct of the United States in view of a European war. The members of the cabinet, with the Attorney-General, met on the 19th at Washington's house, and unanimously decided in favor of the issuance of a proclamation of neutrality. Randolph was directed to draw up the proclamation; on the 22d it was submitted to the President, approved, signed, and ordered to be published. The proclamation was communicated to Congress Dec. 3.

REFERENCES. — *Text* in *Amer. State Papers, Foreign Relations*, I., 140. Washington's letter to the cabinet, and the accompanying questions, are given in Sparks, *Writings of Washington*, X., 337, 533, 534. Jefferson's

account of the cabinet meeting at which the proclamation was discussed is in his *Works* (ed. 1854), IX., 142, 143; for his own views on the subject, *ib.*, IV., 17–20, 29–31. For the controversy between Hamilton and Madison, under the names of "Pacificus" and "Helvidius," see Hamilton's *Works* ed. 1851), VII., 76–117, and Madison's *Writings* (ed. 1865), I., 611–654.

WHEREAS it appears that a state of war exists between Austria, Prussia, Sardinia, Great Britain and the United Netherlands, of the one part, and France on the other; and the duty and interest of the United States require, that they should with sincerity and good faith adopt and pursue a conduct friendly and impartial toward the belligerent Powers:

I have therefore thought fit by these presents to declare the disposition of the United States to observe the conduct aforesaid towards those Powers respectively; and to exhort and warn the citizens of the United States carefully to avoid all acts and proceedings whatsoever, which may in any manner tend to contravene such disposition.

And I do hereby also make known, that whosoever of the citizens of the United States shall render himself liable to punishment or forfeiture under the law of nations, by committing, aiding, or abetting hostilities against any of the said Powers, or by carrying to any of them those articles which are deemed contraband by the *modern* usage of nations, will not receive the protection of the United States, against such punishment or forfeiture; and further, that I have given instructions to those officers, to whom it belongs, to cause prosecutions to be instituted against all persons, who shall, within the cognizance of the courts of the United States, violate the law of nations, with respect to the Powers at war, or any of them. . . .

GEO. WASHINGTON.

No. 57. Treaty with Great Britain

November 19, 1794

THE non-observance by Great Britain of the provisions of the treaty of 1783 in regard to the carrying away of slaves and the withdrawal of troops led to extended but fruitless diplomatic correspondence. In the autumn of 1793 relations between the two countries were further strained by the admiralty

orders for the seizure of neutral vessels laden with provisions destined for French ports. April 16, 1794, Washington nominated John Jay, chief justice of the Supreme Court, as envoy extraordinary to negotiate with Great Britain. By a vote of 18 to 8 the nomination was confirmed. Jay reached London June 15, and Nov. 19 the treaty was concluded. The treaty was submitted to the Senate, in special session, June 8, 1795; on the 24th ratification was advised, with a special reservation as to the twelfth article. An act of May 8, 1796, made appropriations for carrying the treaty into effect.

REFERENCES. — *Text* in *U. S. Stat. at Large*, VIII., 116–129. Jay's instructions and the diplomatic correspondence are in *Amer. State Papers, Foreign Relations*, I., 472–520. The proceedings of the Senate are in the *Annals*, 3d Cong., 854–868; discussions in the House are in the *Annals*, 4th Cong., 1st Sess., 426–783, and in Benton's *Abridgment*, I., 639–754. Washington's message refusing compliance with the request of the House for papers relating to the treaty is in *Amer. State Papers* (Wait's ed., 1817), II., 102–105. For Hamilton's objections to the treaty when first made known, see Gibbs's *Administrations of Washington and Adams*, I., 223, 224; for his later views, over names of "Horatius" and "Camillus," see his *Works* (ed. 1851), VII., 169–528. See also *Works of Fisher Ames* (ed. 1809), 58–93, speech on the treaty; Wharton's *Digest of Intern. Law* (ed. 1887), II., 161–163; and *ib.*, II., 158, 159, for references to judicial decisions involving the treaty.

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ARTICLE I.

There shall be a firm, inviolable and universal peace, and a true and sincere friendship between his Britannic Majesty, his heirs and successors, and the United States of America; and between their respective countries, territories, cities, towns and people of every degree, without exception of persons or places.

ARTICLE II.

His Majesty will withdraw all his troops and garrisons from all posts and places within the boundary lines assigned by the treaty of peace to the United States. This evacuation shall take place on or before . . . [June 1, 1796,] . . . : The United States in the mean time at their discretion, extending their settlements to any part within the said boundary line, except within the precincts or jurisdiction of any of the said posts. All settlers and traders, within the precincts or jurisdiction of the said posts, shall continue to enjoy, unmolested, all their property of every kind, and shall be protected therein. They shall be at full lib-

erty to remain there, or to remove with all or any part of their effects; and it shall also be free to them to sell their lands, houses, or effects, or to retain the property thereof, at their discretion; such of them as shall continue to reside within the said boundary lines, shall not be compelled to become citizens of the United States, or to take any oath of allegiance to the government thereof; but they shall be at full liberty so to do if they think proper, and they shall make and declare their election within one year after the evacuation aforesaid. And all persons who shall continue there after the expiration of the said year, without having declared their intention of remaining subjects of his Britannic Majesty, shall be considered as having elected to become citizens of the United States.

Article III.[1]

It is agreed that it shall at all times be free to his Majesty's subjects, and to the citizens of the United States, and also to the Indians dwelling on either side of the said boundary line, freely to pass and repass by land or inland navigation, into the respective territories and countries of the two parties, on the continent of America (the country within the limits of the Hudson's bay Company only excepted) and to navigate all the lakes, rivers and waters thereof, and freely to carry on trade and commerce with each other. But it is understood, that this article does not extend to the admission of vessels of the United States into the sea-ports, harbours, bays, or creeks of his Majesty's said territories; nor into such parts of the rivers in his Majesty's said territories as are between the mouth thereof, and the highest port of entry from the sea, except in small vessels trading bona fide between Montreal and Quebec, under such regulations as shall be established to prevent the possibility of any frauds in this respect. Nor to the admission of British vessels from the sea into the rivers of the United States, beyond the highest ports of entry for foreign vessels from the sea. The river Mississippi shall, however, according to the treaty of peace, be entirely open to both parties; and it is further agreed, that all the ports and places on its eastern side, to whichsoever of the parties belonging,

[1] See explanatory article, May 4, 1796: *Treaties and Conventions* (ed. 1889), 295, 296. — Ed.

may freely be resorted to and used by both parties, in as ample a manner as any of the Atlantic ports or places of the United States, or any of the ports or places of his Majesty in Great-Britain.

All goods and merchandize whose importation into his Majesty's said territories in America, shall not be entirely prohibited, may freely, for the purposes of commerce, be carried into the same in the manner aforesaid, by the citizens of the United States, and such goods and merchandize shall be subject to no higher or other duties, than would be payable by his Majesty's subjects on the importation of the same from Europe into the said territories. And in like manner, all goods and merchandize whose importation into the United States shall not be wholly prohibited, may freely, for the purposes of commerce, be carried into the same, in the manner aforesaid, by his Majesty's subjects, and such goods and merchandize shall be subject to no higher or other duties, than would be payable by the citizens of the United States on the importation of the same in American vessels into the Atlantic ports of the said states. And all goods not prohibited to be exported from the said territories respectively, may in like manner be carried out of the same by the two parties respectively, paying duty as aforesaid.

No duty of entry shall ever be levied by either party on peltries brought by land, or inland navigation into the said territories respectively, nor shall the Indians passing or repassing with their own proper goods and effects of whatever nature, pay for the same any impost or duty whatever. But goods in bales, or other large packages, unusual among Indians, shall not be considered as goods belonging bona fide to Indians.

No higher or other tolls or rates of ferriage than what are or shall be payable by natives, shall be demanded on either side; and no duties shall be payable on any goods which shall merely be carried over any of the portages or carrying-places on either side, for the purpose of being immediately re-imbarked and carried to some other place or places. But as by this stipulation it is only meant to secure to each party a free passage across the portages on both sides: it is agreed, that this exemption from duty shall extend only to such goods as are carried in the usual and direct road across the portage, and are not attempted to be in

any manner sold or exchanged during their passage across the same. . . .

Article IV.

Whereas it is uncertain whether the river Mississippi extends so far to the northward, as to be intersected by a line to be drawn due west from the Lake of the Woods, in the manner mentioned in the treaty of peace between his Majesty and the United States: it is agreed, that measures shall be taken in concert between his Majesty's government in America and the government of the United States, for making a joint survey of the said river from one degree of latitude below the falls of St. Anthony, to the principal source or sources of the said river, and also of the parts adjacent thereto; and that if on the result of such survey, it should appear that the said river, would not be intersected by such a line as is above mentioned, the two parties will thereupon proceed by amicable negociation, to regulate the boundary line in that quarter, as well as all other points to be adjusted between the said parties, according to justice and mutual convenience, and in conformity to the intent of the said treaty.

Article V.[1]

Whereas doubts have arisen what river was truly intended under the name of the river St. Croix, mentioned in the said treaty of peace, and forming a part of the boundary therein described; that question shall be referred to the final decision of commissioners to be appointed in the following manner, viz. [Each party to choose one commissioner, and these two to choose a third. The commissioners to "decide what river is the river St. Croix, intended by the treaty," and the decision to be final.]

Article VI.

Whereas it is alledged by divers British merchants and others his Majesty's subjects, that debts, to a considerable amount, which were bona fide contracted before the peace, still remain owing to them by citizens or inhabitants of the United States,

[1] See explanatory article, March 15, 1798: *Treaties and Conventions* (ed 1889), 396, 397. — Ed.

and that by the operation of various lawful impediments since the peace, not only the full recovery of the said debts has been delayed, but also the value and security thereof have been, in several instances, impaired and lessened, so that by the ordinary course of judicial proceedings, the British creditors cannot now obtain, and actually have and receive full and adequate compensation for the losses and damages which they have thereby sustained. It is agreed, that in all such cases, where full compensation for such losses and damages cannot, for whatever reason, be actually obtained, had and received by the said creditors in the ordinary course of justice, the United States will make full and complete compensation for the same to the said creditors: But it is distinctly understood, that this provision is to extend to such losses only as have been occasioned by the lawful impediments aforesaid, and is not to extend to losses occasioned by such insolvency of the debtors, or other causes as would equally have operated to produce such loss, if the said impediments had not existed; nor to such losses or damages as have been occasioned by the manifest delay or negligence, or wilful omission of the claimant.

[Claims to be adjudicated by five commissioners, with powers and duties as herein prescribed. The awards of the commissioners to be final, "both as to the justice of the claim, and to the amount of the sum to be paid to the creditor or claimant."]

Article VII.

Whereas complaints have been made by divers merchants and others, citizens of the United States, that during the course of the war in which his Majesty is now engaged, they have sustained considerable losses and damage, by reason of irregular or illegal captures or condemnations of their vessels and other property, under colour of authority or commissions from his Majesty, and that from various circumstances belonging to the said cases, adequate compensation for the losses and damages so sustained cannot now be actually obtained, had and received by the ordinary course of judicial proceedings; it is agreed, that in all such cases, where adequate compensation cannot, for whatever reason, be now actually obtained, had and received by the said merchants

and others, in the ordinary course of justice, full and complete compensation for the same will be made by the British government to the said complainants. But it is distinctly understood, that this provision is not to extend to such losses or damages as have been occasioned by the manifest delay or negligence, or wilful omission of the claimant.

[Claims to be adjudicated by five commissioners, under like conditions to those stated in Art. VI.] [1]

And whereas certain merchants and others his Majesty's subjects, complain, that in the course of the war they have sustained loss and damage, by reason of the capture of their vessels and merchandise, taken within the limits and jurisdiction of the states, and brought into the ports of the same, or taken by vessels originally armed in ports of the said states.

It is agreed that in all such cases where restitution shall not have been made agreeably to the tenor of the letter from Mr. Jefferson to Mr. Hammond, dated at Philadelphia, Sept. 5, 1793, a copy of which is annexed to this treaty; [2] the complaints of the parties shall be and hereby are referred to the commissioners to be appointed by virtue of this article, who are hereby authorized and required to proceed in the like manner relative to these as to the other cases committed to them. . . .

* * * * * * * *

Article X.

Neither the debts due from individuals of the one nation to individuals of the other, nor shares, nor monies which they may have in the public funds, or in the public or private banks, shall ever in any event of war or national differences be sequestered or confiscated. . . .

Article XI.

It is agreed between his Majesty and the United States of America, that there shall be a reciprocal and entirely perfect liberty of navigation and commerce between their respective

[1] A convention providing for payment of indemnity under Articles VI. and VII., and debts under Article IV. of the treaty of Sept. 3, 1783, was concluded Jan. 8, 1802. *Treaties and Conventions* (ed. 1889), 398, 399. — Ed.

[2] *Treaties and Conventions* (ed. 1889), 394, 395. — Ed.

people, in the manner, under the limitations and on the conditions specified in the following articles:

Article XII.

[Art. XII., relating to trade with the West Indies, was suspended by the resolution of the Senate advising ratification, and the suspension was agreed to by Great Britain.]

Article XIII.

His Majesty consents that the vessels belonging to the citizens of the United States of America, shall be admitted and hospitably received, in all the sea-ports and harbours of the British territories in the East-Indies. And that the citizens of the said United States, may freely carry on a trade between the said territories and the said United States, in all articles of which the importation or exportation respectively, to or from the said territories, shall not be entirely prohibited. Provided only, that it shall not be lawful for them in any time of war between the British government and any other power or state whatever, to export from the said territories, without the special permission of the British government there, any military stores, or naval stores, or rice. The citizens of the United States shall pay for their vessels when admitted into the said ports no other or higher tonnage-duty than shall be payable on British vessels when admitted into the ports of the United States. And they shall pay no other or higher duties or charges, on the importation or exportation of the cargoes of the said vessels, than shall be payable on the same articles when imported or exported in British vessels. But it is expressly agreed, that the vessels of the United States shall not carry any of the articles exported by them from the said British territories, to any port or place, except to some port or place in America, where the same shall be unladen, and such regulations shall be adopted by both parties, as shall from time to time be found necessary to enforce the due and faithful observance of this stipulation. It is also understood that the permission granted by this article, is not to extend to allow the vessels of the United States to carry on any part of the coasting-trade of the said British territories; but vessels going with their original

cargoes, or part thereof, from one port of discharge to another, are not to be considered as carrying on the coasting-trade. Neither is this article to be construed to allow the citizens of the said states to settle or reside within the said territories, or to go into the interior parts thereof, without the permission of the British government established there. . . . And the citizens of the United States, whenever they arrive in any port or harbour in the said territories, or if they should be permitted in manner aforesaid, to go to any other place therein, shall always be subject to the laws, government, and jurisdiction of what nature established in such harbor, port or place, according as the same may be. The citizens of the United States may also touch for refreshment at the island of St. Helena, but subject in all respects to such regulations as the British government may from time to time establish there.

Article XIV.

There shall be between all the dominions of his Majesty in Europe and the territories of the United States, a reciprocal and perfect liberty of commerce and navigation. The people and inhabitants of the two countries respectively, shall have liberty freely and securely, and without hindrance and molestation, to come with their ships and cargoes to the lands, countries, cities, ports, places and rivers, within the dominions and territories aforesaid, to enter into the same, to resort there, and to remain and reside there, without any limitation of time. Also to hire and possess houses and ware-houses for the purposes of their commerce, and generally the merchants and traders on each side, shall enjoy the most complete protection and security for their commerce; but subject always as to what respects this article to the laws and statutes of the two countries respectively.

Article XV.

It is agreed that no other or higher duties shall be paid by the ships or merchandize of the one party in the ports of the other, than such as are paid by the like vessels or merchandize of all other nations. Nor shall any other or higher duty be imposed in one country on the importation of any articles the growth, prod-

uce or manufacture of the other, than are or shall be payable on the importation of the like articles being of the growth, produce, or manufacture of any other foreign country. Nor shall any prohibition be imposed on the exportation or importation of any articles to or from the territories of the two parties respectively, which shall not equally extend to all other nations.

But the British government reserves to itself the right of imposing on American vessels entering into the British ports in Europe, a tonnage duty equal to that which shall be payable by British vessels in the ports of America: And also such duty as may be adequate to countervail the difference of duty now payable on the importation of European and Asiatic goods, when imported into the United States in British or in American vessels.

The two parties agree to treat for the more exact equalization of the duties on the respective navigation of their subjects and people, in such manner as may be most beneficial to the two countries. . . . In the interval it is agreed, that the United States will not impose any new or additional tonnage duties on British vessels, nor increase the now-subsisting difference between the duties payable on the importation of any articles in British or in American vessels.

Article XVI.

[Provides for the appointment of consuls.]

Article XVII.

It is agreed, that in all cases where vessels shall be captured or detained on just suspicion of having on board enemy's property, or of carrying to the enemy any of the articles which are contraband of war; the said vessel shall be brought to the nearest or most convenient port; and if any property of an enemy should be found on board such vessel, that part only which belongs to the enemy shall be made prize, and the vessel shall be at liberty to proceed with the remainder without any impediment. . . .

Article XVIII.

In order to regulate what is in future to be esteemed contraband of war, it is agreed, that under the said denomination shall

be comprised all arms and implements serving for the purposes of war, by land or sea, such as cannon, muskets, mortars, petards, bombs, grenades, carcasses, saucisses, carriages for cannon, musket rests, bandoliers, gun-powder, match, saltpetre, ball, pikes, swords, head-pieces, cuirasses, halberts, lances, javelins, horse-furniture, holsters, belts, and generally all other implements of war; as also timber for ship-building, tar or rozin, copper in sheets, sails, hemp, and cordage, and generally whatever may serve directly to the equipment of vessels, unwrought iron and fir planks only excepted; and all the above articles are hereby declared to be just objects of confiscation, whenever they are attempted to be carried to an enemy.

And whereas the difficulty of agreeing on the precise cases in which alone provisions and other articles not generally contraband may be regarded as such, renders it expedient to provide against the inconveniences and misunderstandings which might thence arise: It is further agreed, that whenever any such articles so becoming contraband, according to the existing laws of nations, shall for that reason be seized, the same shall not be confiscated, but the owners thereof shall be speedily and completely indemnified; and the captors, or in their default, the government under whose authority they act, shall pay to the masters or owners of such vessels, the full value of all such articles, with a reasonable mercantile profit thereon, together with the freight, and also the demurrage incident to such detention.

And whereas it frequently happens that vessels sail for a port or place belonging to an enemy, without knowing that the same is either besieged, blockaded or invested; it is agreed, that every vessel so circumstanced, may be turned away from such port or place, but she shall not be detained, nor her cargo, if not contraband, be confiscated, unless after notice she shall again attempt to enter; but she shall be permitted to go to any other port or place she may think proper; Nor shall any vessel or goods of either party, that may have entered into such port or place, before the same was besieged, blockaded, or invested by the other, and be found therein after the reduction or surrender of such place, be liable to confiscation, but shall be restored to the owners or proprietors thereof.

Article XIX.

And that more abundant care may be taken for the security of the respective subjects and citizens of the contracting parties, and to prevent their suffering injuries by the men of war, or privateers of either party, all commanders of ships of war and privateers, and all others the said subjects and citizens, shall forbear doing any damage to those of the other party, or committing any outrage against them, and if they act to the contrary, they shall be punished, and shall also be bound in their persons and estates to make satisfaction and reparation for all damages, and the interest thereof, of whatever nature the said damages may be. . . .

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Article XXI.

It is likewise agreed, that the subjects and citizens of the two nations, shall not do any acts of hostility or violence against each other, nor accept commissions or instructions so to act from any foreign prince or state, enemies to the other party; nor shall the enemies of one of the parties be permitted to invite, or endeavor to enlist in their military service, any of the subjects or citizens of the other party; and the laws against all such offences and aggressions shall be punctually executed. And if any subject or citizen of the said parties respectively, shall accept any foreign commission, or letters of marque, for arming any vessel to act as a privateer against the other party, and be taken by the other party, it is hereby declared to be lawful for the said party, to treat and punish the said subject or citizen, having such commission or letters of marque, as a pirate.

Article XXII.

It is expressly stipulated, that neither of the said contracting parties will order or authorize any acts of reprisal against the other, on complaints of injuries or damages, until the said party shall first have presented to the other a statement thereof, verified by competent proof and evidence, and demanded justice and

satisfaction, and the same shall either have been refused or unreasonably delayed.

ARTICLE XXIII.

The ships of war of each of the contracting parties shall, at all times, be hospitably received in the ports of the other, their officers and crews paying due respect to the laws and government of the country. . . . And his Majesty consents, that in case an American vessel should, by stress of weather, danger from enemies or other misfortune, be reduced to the necessity of seeking shelter in any of his Majesty's ports, into which such vessel could not in ordinary cases claim to be admitted, she shall, on manifesting that necessity to the satisfaction of the government of the place, be hospitably received and be permitted to refit, and to purchase at the market price, such necessaries as she may stand in need of, conformably to such orders and regulations as the government of the place, having respect to the circumstances of each case, shall prescribe. She shall not be allowed to break bulk or unload her cargo, unless the same should be bona fide necessary to her being refitted. Nor shall be permitted to sell any part of her cargo, unless so much only as may be necessary to defray her expences, and then not without the express permission of the government of the place. Nor shall she be obliged to pay any duties whatever, except only on such articles as she may be permitted to sell for the purpose aforesaid.

ARTICLE XXIV.

It shall not be lawful for any foreign privateers (not being subjects or citizens of either of the said parties) who have commissions from any other prince or state in enmity with either nation, to arm their ships in the ports of either of the said parties, nor to sell what they have taken, nor in any other manner to exchange the same; nor shall they be allowed to purchase more provisions, than shall be necessary for their going to the nearest port of that prince or state from whom they obtained their commissions.

ARTICLE XXV.

It shall be lawful for the ships of war and privateers belonging to the said parties respectively, to carry whithersoever they please

the ships and goods taken from their enemies, without being obliged to pay any fee to the officers of the admiralty, or to any judges whatever; nor shall the said prizes when they arrive at, and enter the ports of the said parties, be detained or seized, neither shall the searchers or other officers of those places visit such prizes, (except for the purpose of preventing the carrying of any part of the cargo thereof on shore in any manner contrary to the established laws of revenue, navigation or commerce) nor shall such officers take cognizance of the validity of such prizes; but they shall be at liberty to hoist sail, and depart as speedily as may be, and carry their said prizes to the place mentioned in their commissions or patents, which the commanders of the said ships of war or privateers shall be obliged to show. No shelter or refuge shall be given in their ports to such as have made a prize upon the subjects or citizens of either of the said parties: but if forced by stress of weather, or the dangers of the sea, to enter therein, particular care shall be taken to hasten their departure, and to cause them to retire as soon as possible. Nothing in this treaty contained shall, however, be construed or operate contrary to former and existing public treaties with other sovereigns or states. But the two parties agree, that while they continue in amity, neither of them will in future make any treaty that shall be inconsistent with this or the preceding article.

Neither of the said parties shall permit the ships or goods belonging to the subjects or citizens of the other, to be taken within cannon-shot of the coast, nor in any of the bays, ports, or rivers of their territories, by ships of war, or others having commission from any prince, republic, or state whatever. . . .

Article XXVI.

If at any time a rupture should take place, (which God forbid) between his Majesty and the United States, the merchants and others of each of the two nations, residing in the dominions of the other, shall have the privilege of remaining and continuing their trade, so long as they behave peaceably, and commit no offence against the laws; and in case their conduct should render them suspected, and the respective governments should think proper to order them to remove, the term of twelve months from

the publication of the order shall be allowed them for that purpose, to remove with their families, effects and property; but this favour shall not be extended to those who shall act contrary to the established laws; . . . such rupture shall not be deemed to exist, while negociations for accommodating differences shall be depending, nor until the respective ambassadors or ministers, if such there shall be, shall be recalled, or sent home on account of such differences. . . .

ARTICLE XXVII.

[Provides for the extradition of persons charged with murder or forgery.]

ARTICLE XXVIII.

It is agreed, that the first ten articles of this treaty shall be permanent, and that the subsequent articles, except the twelfth, shall be limited in their duration to twelve years, to be computed from the day on which the ratifications of this treaty shall be exchanged. . . .[1]

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Alien and Sedition Acts

1798

THE papers relating to the mission to France, communicated to Congress April 3, 1798, were printed by order of the Senate April 9. The publication of the dispatches "solidified opposition to France, and gave both houses to Federalist control. Leading republican journalists were chiefly foreigners, and one of the first objects of the Federalists was to muzzle these aliens" (Johnston). The result of these efforts was the passage of the four acts following, known collectively as the alien and sedition acts.

REFERENCES. — For the *texts* of the acts, and their legislative history, see under each act, following. For the proceedings in Congress, see *House and Senate Journals*, 5th Cong. 2d Sess.; for the debates, see the *Annals*, 5th Cong., or Benton's *Abridgment*, II. The adverse report of a committee of the House, Feb. 21, 1799, on petitions for the repeal of the laws, is in *Amer. State Papers, Miscellaneous*, I., 181–184.

[1] Signed: "Grenville, John Jay." — ED.

No. 58. Naturalization Act

June 18, 1798

April 19, 1798, Coit of Connecticut introduced in the House a resolution for the appointment of a committee to consider the expediency of suspending or amending the existing law regarding naturalization. With the addition of a clause calling upon the committee "to consider and report upon the expediency of establishing by law regulations respecting aliens arriving or residing within the United States," the resolution was adopted. May 3 the committee reported three resolutions, the first of which favored a longer term of residence for aliens before naturalization. The first two resolutions were agreed to by the House, and referred to a committee, which on May 15 brought in a bill to amend the naturalization law. The bill was taken up on the 21st, discussed at length, and on the 22d passed, after an unsuccessful attempt to incorporate a provision suspending for a limited time the operation of the act. In the Senate the bill was referred to a committee of three, which reported an amended bill June 8. The bill as reported was agreed to on the 11th, and on the 12th, after further amendments, passed by a vote of 13 to 8. June 13 the House agreed to the Senate amendments; on the 18th the act was approved.

References. — *Text* in *U. S. Stat. at Large*, I., 566–569. The act was repealed by the act of April 14, 1802 (*Stat. at Large*, II., 153–155).

An Act supplementary to and to amend the act, intituled "An act to establish an uniform rule of naturalization; and to repeal the act heretofore passed on that subject.

Section 1. *Be it enacted* . . . , That no alien shall be admitted to become a citizen of the United States, or of any state, unless in the manner prescribed by the act, intituled "An act to establish an uniform rule of naturalization; and to repeal the act heretofore passed on that subject," [1] he shall have declared his intention to become a citizen of the United States, five years, at least, before his admission, and shall, at the time of his application to be admitted, declare and prove, to the satisfaction of the court having jurisdiction in the case, that he has resided within the United States fourteen years, at least, and within the state or territory where, or for which such court is at the time held, five years, at least, besides conforming to the other declarations, renunciations and proofs, by the said act required, any thing therein to the contrary hereof notwithstanding: *Provided*, that any alien,

[1] Act of Jan. 29, 1795 (*Stat. at Large*, I., 414, 415), repealing act of March 26, 1790 (*Stat. at Large*, I., 103, 104). — Ed.

who was residing within the limits, and under the jurisdiction of the United States, before . . . [January 29, 1795,] . . . may, within one year after the passing of this act — and any alien who shall have made the declaration of his intention to become a citizen of the United States, in conformity to the provisions of the act [of Jan. 29, 1795], may, within four years after having made the declaration aforesaid, be admitted to become a citizen, in the manner prescribed by the said act, upon his making proof that he has resided five years, at least, within the limits, and under the jurisdiction of the United States: *And provided also*, that no alien, who shall be a native, citizen, denizen or subject of any nation or state with whom the United States shall be at war, at the time of his application, shall be then admitted to become a citizen of the United States.

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Sec. 4. *And be it further enacted*, That all white persons, aliens, (accredited foreign ministers, consuls, or agents, their families and domestics, excepted) who, after the passing of this act, shall continue to reside, or who shall arrive, or come to reside in any port or place within the territory of the United States, shall be reported, if free, and of the age of twenty-one years, by themselves, or being under the age of twenty-one years, or holden in service, by their parent, guardian, master or mistress in whose care they shall be, to the clerk of the district court of the district, if living within ten miles of the port or place, in which their residence or arrival shall be, and otherwise, to the collector of such port or place, or some officer or other person there, or nearest thereto, who shall be authorized by the President of the United States, to register aliens: And report, as aforesaid, shall be made in all cases of residence, within six months from and after the passing of this act, and in all after cases, within forty-eight hours after the first arrival or coming into the territory of the United States, and shall ascertain the sex, place of birth, age, nation, place of allegiance or citizenship, condition or occupation, and place of actual or intended residence within the United States, of the alien or aliens reported, and by whom the report is made. . . . And the clerk of each district court shall, during one year from the passing of this act, make monthly returns to the department of State, of all aliens registered and returned, as aforesaid, in his office.

SEC. 5. *And be it further enacted*, That every alien who shall continue to reside, or who shall arrive, as aforesaid, of whom a report is required as aforesaid, who shall refuse or neglect to make such report, and to receive a certificate thereof, shall forfeit and pay the sum of two dollars; and any justice of the peace, or other civil magistrate, who has authority to require surety of the peace, shall and may, on complaint to him made thereof, cause such alien to be brought before him, there to give surety of the peace and good behaviour during his residence within the United States, or for such term as the justice or other magistrate shall deem reasonable, and until a report and registry of such alien shall be made, and a certificate thereof, received as aforesaid; and in failure of such surety, such alien shall and may be committed to the common gaol, and shall be there held, until the order which the justice or magistrate shall and may reasonably make, in the premises, shall be performed. And every person, whether alien, or other, having the care of any alien or aliens, under the age of twenty-one years, or of any white alien holden in service, who shall refuse and neglect to make report thereof, as aforesaid, shall forfeit the sum of two dollars, for each and every such minor or servant, monthly, and every month, until a report and registry, and a certificate thereof, shall be had, as aforesaid.

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No. 59. Alien Act

June 25, 1798

APRIL 25, 1798, Senator Hillhouse of Connecticut introduced a resolution for the appointment of a committee "to consider whether any, and what provisions ought to be made by law, for removing from the territory of the United States, such *aliens born*, not entitled by the Constitution and laws thereof to the rights of citizenship, as may be dangerous to its peace and safety; and providing for returns to be made of all aliens that shall be landed from any vessel which shall arrive in any of the ports of the United States; and that permits be granted to such as shall be suffered to reside therein; and to report by bill or otherwise." The next day the resolution, with the word "born" stricken out, was adopted. May 4 the committee reported a bill, which was read a second time May 8, and debated until June 1, when it was recommitted. An amended bill was reported June 4, and passed, with further

amendments, June 8, by a vote of 16 to 7. The bill was taken up in the House June 18, and passed with amendments on the 21st, by a vote of 46 to 40. On the 22d the Senate concurred in the House amendments; on the 25th the act was approved.

REFERENCES. — *Text* in *U. S. Stat. at Large*, I., 570–572.

An Act concerning Aliens.

SECTION 1. *Be it enacted* . . . , That it shall be lawful for the President of the United States at any time during the continuance of this act, to *order* all such *aliens* as he shall judge dangerous to the peace and safety of the United States, or shall have reasonable grounds to suspect are concerned in any treasonable or secret machinations against the government thereof, to depart out of the territory of the United States, within such time as shall be expressed in such order, which order shall be served on such alien by delivering him a copy thereof, or leaving the same at his usual abode, and returned to the office of the Secretary of State, by the marshal or other person to whom the same shall be directed. And in case any alien, so ordered to depart, shall be found at large within the United States after the time limited in such order for his departure, and not having obtained a *license* from the President to reside therein, or having obtained such *license* shall not have conformed thereto, every such alien shall, on conviction thereof, be imprisoned for a term not exceeding three years, and shall never after be admitted to become a citizen of the United States. *Provided always, and be it further enacted*, that if any alien so ordered to depart shall prove to the satisfaction of the President, by evidence to be taken before such person or persons as the President shall direct, who are for that purpose hereby authorized to administer oaths, that no injury or danger to the United States will arise from suffering such alien to reside therein, the President may grant a *license* to such alien to remain within the United States for such time as he shall judge proper, and at such place as he may designate. And the President may also require of such alien to enter into a bond to the United States, in such penal sum as he may direct, with one or more sufficient sureties to the satisfaction of the person authorized by the President to take the same, conditioned for the good behavior of such alien during his residence in the United States, and not violating his license, which license the President may revoke, whenever he shall think proper.

Sec. 2. *And be it further enacted*, That it shall be lawful for the President of the United States, whenever he may deem it necessary for the public safety, to order to be removed out of the territory thereof, any alien who may or shall be in prison in pursuance of this act; and to cause to be arrested and sent out of the United States such of those aliens as shall have been ordered to depart therefrom and shall not have obtained a license as aforesaid, in all cases where, in the opinion of the President, the public safety requires a speedy removal. And if any alien so removed or sent out of the United States by the President shall voluntarily return thereto, unless by permission of the President of the United States, such alien on conviction thereof, shall be imprisoned so long as, in the opinion of the President, the public safety may require.

Sec. 3. [Masters of vessels to report aliens brought in, &c.].

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Sec. 5. *And be it further enacted*, That it shall be lawful for any alien who may be ordered to be removed from the United States, by virtue of this act, to take with him such part of his goods, chattels, or other property, as he may find convenient; and all property left in the United States by any alien, who may be removed, as aforesaid, shall be, and remain subject to his order and disposal, in the same manner as if this act had not been passed.

Sec. 6. *And be it further enacted*, That this act shall continue and be in force for and during the term of two years from the passing thereof.[1]

No. 60. Alien Enemies Act

July 6, 1798

A "bill respecting alien enemies" was introduced in the House May 18, 1798, considered in Committee of the Whole House on the 22d, and the next day, by a vote of 46 to 44, recommitted. The committee reported an amended bill June 8; on the same day the "act concerning aliens" was received from the Senate, and both bills were made the order of the day for June 11. The alien enemies bill was not reached until the 25th; the next day it passed the House. On the 27th the Senate referred the bill to the committee having also

[1] The act was not renewed. — Ed.

in charge the sedition bill; this committee reported an amended bill July 2, which passed the Senate on the 3d. On the same day the House agreed to the Senate amendments, and on the 6th the act was approved.

REFERENCES. — *Text* in *U. S. Stat. at Large*, I., 577, 578. Compare *Revised Statutes* (ed. 1878), secs. 4067–4070. The text of the bill introduced May 18 is in the *Annals*, 5th Cong., under date of May 22.

An Act respecting Alien Enemies.

SECTION 1. *Be it enacted* . . . , That whenever there shall be a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion shall be perpetrated, attempted, or threatened against the territory of the United States, by any foreign nation or government, and the President of the United States shall make public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being males of the age of fourteen years and upwards, who shall be within the United States, and not actually naturalized, shall be liable to be apprehended, restrained, secured and removed, as alien enemies. And the President of the United States shall be, and he is hereby authorized, in any event, as aforesaid, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, towards the aliens who shall become liable, as aforesaid; the manner and degree of the restraint to which they shall be subject, and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those, who, not being permitted to reside within the United States, shall refuse or neglect to depart therefrom; and to establish any other regulations which shall be found necessary in the premises and for the public safety: Provided, that aliens resident within the United States, who shall become liable as enemies, in the manner aforesaid, and who shall not be chargeable with actual hostility, or other crime against the public safety, shall be allowed, for the recovery, disposal, and removal of their goods and effects, and for their departure, the full time which is, or shall be stipulated by any treaty, where any shall have been between the United States, and the hostile nation or government, of which they shall be natives, citizens, denizens or subjects: and when no such treaty shall have existed, the President of the United States may ascertain and declare such reasonable time as may be consistent with the

public safety, and according to the dictates of humanity and national hospitality.

[Sections 2 and 3 relate to the duties of courts and marshals in connection with this act.]

No. 61. Sedition Act

July 14, 1798

JUNE 23, 1798, Senator Lloyd of Maryland gave notice of his intention to ask for leave to bring in a bill "to define more particularly the crime of treason, and to define and punish the crime of sedition." When the matter came up on the 26th, a motion was made to refer the request to a committee; the motion was lost, the vote being 4 to 17, and by a vote of 14 to 8 leave was given to introduce the bill. The next day the bill, by a vote of 15 to 6, was referred to a committee. Amendments to the bill were reported by the committee July 2, agreed to on the 3d, and the bill, by a vote of 18 to 5, ordered to a third reading. On the 4th the bill passed, the vote being 18 to 6. In the House the following day a motion to reject the bill was defeated, 36 to 47. July 6 an attempt to refer the bill to a select committee also failed, and a set of resolutions for the punishment of seditious writers, submitted by Harper of South Carolina, was referred to the Committee of the Whole House. The sedition bill was considered July 9; all except the first section of the Senate bill was stricken out and new sections inserted; on the 10th the amended bill, by vote of 44 to 41, passed the House. On the 12th the Senate concurred in the House amendments; on the 14th the act was approved.

REFERENCES. — *Text* in *U. S. Stat. at Large*, I., 596, 597. An abstract of the Senate bill is in the *Annals*, 5th Cong., II., 2093. Harper's resolutions are in the *House Journal*, also in the *Annals*. For prosecutions under the sedition act, see Wharton's *State Trials*, 333, 659, 684, 688.

An Act in addition to the act, entitled "An Act for the punishment of certain crimes against the United States."

SECTION 1. *Be it enacted* . . . , That if any persons shall unlawfully combine or conspire together, with intent to oppose any measure or measures of the government of the United States, which are or shall be directed by proper authority, or to impede the operation of any law of the United States, or to intimidate or prevent any person holding a place or office in or under the government of the United States, from undertaking, performing or executing his trust or duty; and if any person or persons,

with intent as aforesaid, shall counsel, advise or attempt to procure any insurrection, riot, unlawful assembly, or combination, whether such conspiracy, threatening, counsel, advice, or attempt shall have the proposed effect or not, he or they shall be deemed guilty of a high misdemeanor, and on conviction, before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding five thousand dollars, and by imprisonment during a term not less than six months nor exceeding five years; and further, at the discretion of the court may be holden to find sureties for his good behaviour in such sum, and for such time, as the said court may direct.

SEC. 2. *And be it further enacted*, That if any person shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either house of the Congress of the United States, or the President of the United States, with intent to defame the said government, or either house of the said Congress, or the said President, or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the good people of the United States, or to stir up sedition within the United States, or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President of the United States, done in pursuance of any such law, or of the powers in him vested by the constitution of the United States, or to resist, oppose, or defeat any such law or act, or to aid, encourage or abet any hostile designs of any foreign nation against the United States, their people or government, then such person, being thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.

SEC. 3. *And be it further enacted and declared*, That if any person shall be prosecuted under this act, for the writing or publishing any libel aforesaid, it shall be lawful for the defendant, upon the trial of the cause, to give in evidence in his defence, the truth of the matter contained in the publication charged as a libel

And the jury who shall try the cause, shall have a right to determine the law and the fact, under the direction of the court, as in other cases.

Sec. 4. *And be it further enacted*, That this act shall continue and be in force until . . . [March 3, 1801] . . . , and no longer:[1] *Provided*, that the expiration of the act shall not prevent or defeat a prosecution and punishment of any offence against the law, during the time it shall be in force.

Kentucky and Virginia Resolutions

1798, 1799

The Virginia resolutions of 1798 and the Kentucky resolutions of 1798 and 1799 were outcomes of the discussion over the alien and sedition laws. The legislature of Kentucky met Nov. 7, 1798, and on the following day John Breckinridge introduced in the House a set of resolutions, the original draft of which had been prepared by Jefferson. The resolutions, with amendments, were adopted by the House on the 10th; on the 13th the Senate concurred, and on the 16th the resolutions received the approval of the governor. A set of resolutions prepared by Madison, then a member of the Virginia legislature, was presented in that body Dec. 13, 1798, by John Taylor. The resolutions were debated until the 21st, when, by a vote of 100 to 63, they were adopted; on the 24th they passed the Senate, the vote being 14 to 3, and were approved by the governor. Copies of each set of resolutions were transmitted to the governors of the various States to be laid before the legislatures. Replies were made by the legislatures of New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, and Delaware, and in each case were "decidedly unfavorable." In 1799 Kentucky reaffirmed its adherence to the doctrine of the resolutions of 1798, and added another resolution. In Virginia the replies of the State legislatures were referred to a committee, of which Madison was chairman, which made an elaborate report Jan. 7, 1800.

References. — For the *texts*, see under each set of resolutions, following. The answers of the State legislatures are in Elliot's *Debates* (ed. 1836), IV., 558–565, where are also Madison's report of 1800, and extracts from an "address to the people" accompanying the Virginia resolutions. Madison's report is also in his *Writings* (ed. 1865), IV., 515–555; see also various letters of Madison, *ib.* II., 151–156; IV., 95–111. Warfield's *Kentucky Resolutions of* 1798 is of special importance; *cf.* review in *Nation*, XLV., 528, 529, and correspondence in *ib.*, XLIV., 382–384, 467, 468.

[1] The act was not renewed. — Ed.

No. 62. Kentucky Resolutions

November 16, 1798

REFERENCES. — *Text* in Shaler's *Kentucky*, 409–416, certified as a true copy of the original in the Massachusetts archives. The formal endorsements at the end are omitted. Jefferson's draft is in his *Works* (ed. 1856), IX., 464–471.

* * * * * * * *

I. *Resolved*, that the several States composing the United States of America, are not united on the principle of unlimited submission to their general government; but that by compact under the style and title of a Constitution for the United States and of amendments thereto, they constituted a general government for special purposes, delegated to that government certain definite powers, reserving each State to itself, the residuary mass of right to their own self-government; and that whensoever the general government assumes undelegated powers, its acts are unauthoritative, void, and of no force: That to this compact each State acceded as a State, and is an integral party, its co-States forming, as to itself, the other party: That the government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself; since that would have made its discretion, and not the Constitution, the measure of its powers; but that as in all other cases of compact among parties having no common Judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress.

II. *Resolved*, that the Constitution of the United States having delegated to Congress a power to punish treason, counterfeiting the securities and current coin of the United States, piracies and felonies committed on the high seas, and offenses against the laws of nations, and no other crimes whatever, and it being true as a general principle, and one of the amendments to the Constitution having also declared "that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people," therefore also . . . [the Sedition Act of July 14, 1798] . . . ; as also the act passed by them on the 27th day of June, 1798, entitled "An act to punish frauds committed on the Bank of the United States"

(and all other their acts which assume to create, define, or punish crimes other than those enumerated in the Constitution), are altogether void and of no force, and that the power to create, define, and punish such other crimes is reserved, and of right appertains solely and exclusively to the respective States, each within its own Territory.

III. *Resolved*, that it is true as a general principle, and is also expressly declared by one of the amendments to the Constitution that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people;" and that no power over the freedom of religion, freedom of speech, or freedom of the press being delegated to the United States by the Constitution, nor prohibited by it to the States, all lawful powers respecting the same did of right remain, and were reserved to the States, or to the people: That thus was manifested their determination to retain to themselves the right of judging how far the licentiousness of speech and of the press may be abridged without lessening their useful freedom, and how far those abuses which cannot be separated from their use should be tolerated rather than the use be destroyed; and thus also they guarded against all abridgment by the United States of the freedom of religious opinions and exercises, and retained to themselves the right of protecting the same, as this State, by a law passed on the general demand of its citizens, had already protected them from all human restraint or interference: And that in addition to this general principle and express declaration, another and more special provision has been made by one of the amendments to the Constitution which expressly declares, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press," thereby guarding in the same sentence, and under the same words, the freedom of religion, of speech, and of the press, insomuch, that whatever violates either, throws down the sanctuary which covers the others, and that libels, falsehoods, defamation equally with heresy and false religion, are withheld from the cognizance of Federal tribunals. That therefore . . . [the Sedition Act] . . . , which does abridge the freedom of the press, is not law, but is altogether void and of no effect.

IV. *Resolved*, that alien friends are under the jurisdiction and protection of the laws of the State wherein they are; that no power over them has been delegated to the United States, nor prohibited to the individual States distinct from their power over citizens; and it being true as a general principle, and one of the amendments to the Constitution having also declared that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people," the . . . [Alien Act of June 22, 1798] . . . , which assumes power over alien friends not delegated by the Constitution, is not law, but is altogether void and of no force.

V. *Resolved*, that in addition to the general principle as well as the express declaration, that powers not delegated are reserved, another and more special provision inserted in the Constitution from abundant caution has declared, "that the migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808." That this Commonwealth does admit the migration of alien friends described as the subject of the said act concerning aliens; that a provision against prohibiting their migration is a provision against all acts equivalent thereto, or it would be nugatory; that to remove them when migrated is equivalent to a prohibition of their migration, and is therefore contrary to the said provision of the Constitution, and void.

VI. *Resolved*, that the imprisonment of a person under the protection of the laws of this Commonwealth on his failure to obey the simple order of the President to depart out of the United States, as is undertaken by the said act entitled "An act concerning aliens," is contrary to the Constitution, one amendment to which has provided, that "no person shall be deprived of liberty without due process of law," and that another having provided "that in all criminal prosecutions, the accused shall enjoy the right to a public trial by an impartial jury, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel for his defense," the same act undertaking to authorize the President to remove a person out of the United States who is under the protection of the law, on his own suspicion, without accusation

without jury, without public trial, without confrontation of the witnesses against him, without having witnesses in his favour, without defense, without counsel, is contrary to these provisions also of the Constitution, is therefore not law, but utterly void and of no force. That transferring the power of judging any person who is under the protection of the laws, from the courts to the President of the United States, as is undertaken by the same act concerning aliens, is against the article of the Constitution which provides, that "the judicial power of the United States shall be vested in courts, the judges of which shall hold their offices during good behavior," and that the said act is void for that reason also; and it is further to be noted, that this transfer of judiciary power is to that magistrate of the general government who already possesses all the executive, and a qualified negative in all the legislative powers.

VII. *Resolved*, that the construction applied by the general government (as is evinced by sundry of their proceedings) to those parts of the Constitution of the United States which delegate to Congress a power to lay and collect taxes, duties, imposts, and excises; to pay the debts, and provide for the common defense, and general welfare of the United States, and to make all laws which shall be necessary and proper for carrying into execution the powers vested by the Constitution in the government of the United States, or any department thereof, goes to the destruction of all the limits prescribed to their power by the Constitution: That words meant by that instrument to be subsidiary only to the execution of the limited powers ought not to be so construed as themselves to give unlimited powers, nor a part so to be taken as to destroy the whole residue of the instrument: That the proceedings of the general government under color of these articles will be a fit and necessary subject for revisal and correction at a time of greater tranquillity, while those specified in the preceding resolutions call for immediate redress.

VIII. *Resolved*, that the preceding Resolutions be transmitted to the Senators and Representatives in Congress from this Commonwealth, who are hereby enjoined to present the same to their respective Houses, and to use their best endeavors to procure, at the next session of Congress, a repeal of the aforesaid unconstitutional and obnoxious acts.

IX. *Resolved*, lastly, that the Governor of this Commonwealth be, and is hereby authorized and requested to communicate the preceding Resolutions to the Legislatures of the several States, to assure them that this Commonwealth considers Union for specified National purposes, and particularly for those specified in their late Federal Compact, to be friendly to the peace, happiness, and prosperity of all the States: that faithful to that compact according to the plain intent and meaning in which it was understood and acceded to by the several parties, it is sincerely anxious for its preservation: that it does also believe, that to take from the States all the powers of self-government, and transfer them to a general and consolidated government, without regard to the special delegations and reservations solemnly agreed to in that compact, is not for the peace, happiness, or prosperity of these States: And that, therefore, this Commonwealth is determined, as it doubts not its co-States are, tamely to submit to undelegated and consequently unlimited powers in no man or body of men on earth: that if the acts before specified should stand, these conclusions would flow from them; that the general government may place any act they think proper on the list of crimes and punish it themselves, whether enumerated or not enumerated by the Constitution as cognizable by them: that they may transfer its cognizance to the President or any other person, who may himself be the accuser, counsel, judge, and jury, whose suspicions may be the evidence, his order the sentence, his officer the executioner, and his breast the sole record of the transaction: that a very numerous and valuable description of the inhabitants of these States being by this precedent reduced as outlaws to the absolute dominion of one man, and the barrier of the Constitution thus swept away from us all, no rampart now remains against the passions and the powers of a majority of Congress, to protect from a like exportation or other more grievous punishment the minority of the same body, the legislatures, judges, governors, and counselors of the States, nor their other peaceable inhabitants who may venture to reclaim the constitutional rights and liberties of the State and people, or who for other causes, good or bad, may be obnoxious to the views or marked by the suspicions of the President, or be thought dangerous to his or their elections or other interests, public or personal: that the friendless alien has indeed

been selected as the safest subject of a first experiment, but the citizen will soon follow, or rather has already followed: for, already has a sedition act marked him as its prey: that these and successive acts of the same character, unless arrested on the threshold, may tend to drive these States into revolution and blood, and will furnish new calumnies against Republican governments, and new pretexts for those who wish it to be believed, that man cannot be governed but by a rod of iron: that it would be a dangerous delusion were a confidence in the men of our choice to silence our fears for the safety of our rights: that confidence is everywhere the parent of despotism: free government is founded in jealousy and not in confidence; it is jealousy and not confidence which prescribes limited Constitutions to bind down those whom we are obliged to trust with power: that our Constitution has accordingly fixed the limits to which and no further our confidence may go; and let the honest advocate of confidence read the alien and sedition acts, and say if the Constitution has not been wise in fixing limits to the government it created, and whether we should be wise in destroying those limits; let him say what the government is if it be not a tyranny, which the men of our choice have conferred on the President, and the President of our choice has assented to and accepted over the friendly strangers, to whom the mild spirit of our country and its laws had pledged hospitality and protection: that the men of our choice have more respected the bare suspicions of the President than the solid rights of innocence, the claims of justification, the sacred force of truth, and the forms and substance of law and justice. In questions of power then let no more be heard of confidence in man, but bind him down from mischief by the claims of the Constitution. That this Commonwealth does therefore call on its co-States for an expression of their sentiments on the acts concerning aliens, and for the punishment of certain crimes herein before specified, plainly declaring whether these acts are or are not authorized by the Federal Compact. And it doubts not that their sense will be so announced as to prove their attachment unaltered to limited government, whether general or particular and that the rights and liberties of their co-States will be exposed to no dangers by remaining embarked on a common bottom with their own: That they will concur with this Commonwealth in

considering the said acts so palpably against the Constitution as to amount to an undisguised declaration, that the compact is not meant to be the measure of the powers of the general government, but that it will proceed in the exercise over these States of all powers whatsoever: That they will view this as seizing the rights of the States and consolidating them in the hands of the general government with a power assumed to bind the States (not merely in cases made Federal) but in all cases whatsoever, by laws made, not with their consent, but by others against their consent: That this would be to surrender the form of government we have chosen, and to live under one deriving its powers from its own will, and not from our authority; and that the co-States, recurring to their natural right in cases not made Federal, will concur in declaring these acts void and of no force, and will each unite with this Commonwealth in requesting their repeal at the next session of Congress.

No. 63. Virginia Resolutions

December 24, 1798

REFERENCES. — *Text* in Madison's *Writings* (ed. 1865), IV., 506, 507, certified as a true copy of the original on file in the Virginia archives.

Resolved, That the General Assembly of Virginia doth unequivocally express a firm resolution to maintain and defend the Constitution of the United States, and the Constitution of this State, against every aggression either foreign or domestic; and that they will support the Government of the United States in all measures warranted by the former.

That this Assembly most solemnly declares a warm attachment to the Union of the States, to maintain which it pledges all its powers; and that, for this end, it is their duty to watch over and oppose every infraction of those principles which constitute the only basis of that Union, because a faithful observance of them can alone secure its existence and the public happiness.

That this Assembly doth explicitly and peremptorily declare that it views the powers of the Federal Government as resulting from the compact to which the States are parties, as limited by

the plain sense and intention of the instrument constituting that compact; as no further valid than they are authorized by the grants enumerated in that compact; and that, in case of a deliberate, palpable, and dangerous exercise of other powers not granted by the said compact, the States, who are parties thereto, have the right and are in duty bound to interpose for arresting the progress of the evil, and for maintaining within their respective limits the authorities, rights, and liberties appertaining to them.

That the General Assembly doth also express its deep regret, that a spirit has in sundry instances been manifested by the Federal Government to enlarge its powers by forced constructions of the constitutional charter which defines them; and that indications have appeared of a design to expound certain general phrases (which, having been copied from the very limited grant of powers in the former Articles of Confederation, were the less liable to be misconstrued) so as to destroy the meaning and effect of the particular enumeration which necessarily explains and limits the general phrases; and so as to consolidate the States, by degrees, into one sovereignty, the obvious tendency and inevitable consequence of which would be to transform the present republican system of the United States into an absolute, or, at best, a mixed monarchy.

That the General Assembly doth particularly protest against the palpable and alarming infractions of the Constitution in the two late cases of the "Alien and Sedition Acts," passed at the last session of Congress; the first of which exercises a power nowhere delegated to the Federal Government, and which, by uniting legislative and judicial powers to those of [the] executive, subvert the general principles of free government, as well as the particular organization and positive provisions of the Federal Constitution: and the other of which acts exercises, in like manner, a power not delegated by the Constitution, but, on the contrary, expressly and positively forbidden by one of the amendments thereto, — a power which, more than any other, ought to produce universal alarm, because it is levelled against the right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right.

That this State having by its Convention which ratified the

Federal Constitution expressly declared that, among other essential rights, "the liberty of conscience and of the press cannot be cancelled, abridged, restrained or modified by any authority of the United States," and from its extreme anxiety to guard these rights from every possible attack of sophistry or ambition, having, with other States, recommended an amendment for that purpose, which amendment was in due time annexed to the Constitution, — it would mark a reproachful inconsistency and criminal degeneracy, if an indifference were now shown to the palpable violation of one of the rights thus declared and secured, and to the establishment of a precedent which may be fatal to the other.

That the good people of this Commonwealth, having ever felt and continuing to feel the most sincere affection for their brethren of the other States, the truest anxiety for establishing and perpetuating the union of all and the most scrupulous fidelity to that Constitution, which is the pledge of mutual friendship, and the instrument of mutual happiness, the General Assembly doth solemnly appeal to the like dispositions of the other States, in confidence that they will concur with this Commonwealth in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional; and that the necessary and proper measures will be taken by each for co-operating with this State, in maintaining unimpaired the authorities, rights, and liberties reserved to the States respectively, or to the people.

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No. 64. Kentucky Resolutions

November 22, 1799

References. — *Text* in Elliot's *Debates* (ed. 1836), IV., 570–572. Corrections of a number of obvious typographical errors are enclosed in square brackets. The formal endorsements at the end are omitted.

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The representatives of the good people of this Commonwealth, in General Assembly convened, having maturely considered the answers of sundry States in the Union, to their resolutions passed

the last session, respecting certain unconstitutional laws of Congress, commonly called the Alien and Sedition Laws, would be faithless, indeed, to themselves and to those they represent, were they silently to acquiesce in the principles and doctrines attempted to be maintained in all those answers, that of Virginia only excepted. To again enter the field of argument, and attempt more fully or forcibly to expose the unconstitutionality of those obnoxious laws, would, it is apprehended, be as unnecessary as unavailing. We cannot, however, but lament, that, in the discussion of those interesting subjects, by sundry of the Legislatures of our sister States, unfounded suggestions, and uncandid insinuations, derogatory to the true character and principles of this Commonwealth has been substituted in place of fair reasoning and sound argument. Our opinions of these alarming measures of the General Government, together with our reasons for those opinions, were detailed with decency, and with temper, and submitted to the discussion and judgment of our fellow-citizens throughout the Union. Whether the like decency and temper have been observed in the answers of most of those States, who have denied or attempted to obviate the great truths contained in those resolutions, we have now only to submit to a candid world. Faithful to the true principles of the federal Union, unconscious of any designs to disturb the harmony of that Union, and anxious only to escape the fangs of despotism, the good people of this Commonwealth are regardless of censure or calumniation. Least [Lest], however, the silence of this Commonwealth should be construed into an acquiescence in the doctrines and principles advanced and attempted to be maintained by the said answers, or at least those of our fellow-citizens throughout the Union who so widely differ from us on those important subjects, should be deluded by the expectation, that we shall be deterred from what we conceive our duty, or shrink from the principles contained in those resolutions — therefore,

Resolved, That this Commonwealth considers the Federal Union, upon the terms and for the purposes specified in the late compact, conducive to the liberty and happiness of the several States: That it does now unequivocally declare its attachment to the Union, and to that compact, agreeably to its obvious and real intention, and will be among the last to seek its dissolution: That if those who administer the General Government be permitted to trans-

gress the limits fixed by that compact, by a total disregard to the special delegations of power therein contained, an annihilation of the State Governments, and the creation upon their ruins of a General Consolidated Government, will be the inevitable consequence: That the principle and construction contended for by sundry of the state legislatures, that the General Government is the exclusive judge of the extent of the powers delegated to it, stop nothing [short] of *despotism* — since the discretion of those who administer the government, and not the *Constitution*, would be the measure of their powers: That the several states who formed that instrument being sovereign and independent, have the unquestionable right to judge of the infraction; and, *That a Nullification by those sovereignties, of all unauthorized acts done under color of that instrument is the rightful remedy:* That this Commonwealth does, under the most deliberate reconsideration, declare, that the said Alien and Sedition Laws are, in their opinion, palpable violations of the said Constitution; and, however cheerfully it may be disposed to surrender its opinion to a majority of its sister states, in matters of ordinary or doubtful policy, yet, in no [*omit*] momentous regulations like the present, which so vitally wound the best rights of the citizen, it would consider a silent acquiescence as highly criminal: That although this commonwealth, as a party to the federal compact, will bow to the laws of the Union, yet, it does, at the same [time] declare, that it will not now, or ever hereafter, cease to oppose in a constitutional manner, every attempt at what quarter soever offered, to violate that compact. And, finally, in order that no pretext or arguments may be drawn from a supposed acquiescence, on the part of this Commonwealth in the constitutionality of those laws, and be thereby used as precedents for similar future violations of the Federal compact — this Commonwealth does now enter against them its solemn PROTEST.

No. 65. Treaty with France for the Cession of Louisiana

April 30, 1803

THE region known as Louisiana belonged to France until 1762, when it was ceded to Spain. By the treaty of Paris in 1763, a portion of Louisiana east of the Mississippi was ceded to Great Britain, and in 1783 the eastern bank of the Mississippi as far south as the 31st parallel passed into the control of the United States. By the third article of the secret treaty of San Ildefonso, Oct. 1, 1800, Spain agreed to cede Louisiana to France. October 16, 1802, the Spanish intendant of Louisiana by proclamation forbade citizens of the United States the further use of New Orleans "as a place of deposit for merchandise, and free transit for our ships down the river to the sea." An appropriation of $2,000,000 was made by Congress for the purchase of New Orleans. January 11, 1803, Jefferson nominated Monroe as minister extraordinary to co-operate with Livingston, the minister to France, in negotiations for "a treaty or convention with the First Consul of France, for the purpose of enlarging, and more effectually securing, our rights and interests in the river Mississippi, and in the territories eastward thereof." The outcome of the negotiations was the purchase of Louisiana by the United States. A treaty and two conventions, dated April 30, 1803, were signed early in May. A special session of Congress was called for Oct. 17; on the 20th the Senate, by a vote of 24 to 7, ratified the treaty. The House declared in favor of the treaty on the 25th, by a vote of 90 to 25.

REFERENCES. — English and French *text* in *U. S. Stat. at Large*, VIII., 200–206. The message of Jan. 11, 1803, is in *Amer. State Papers, Foreign Relations*, II., 475; for the two conventions and diplomatic correspondence, *ib.*, II., 508–583, or *Annals*, 7th Cong., 2d Sess., 1007–1210. The discussions in the House may be followed in the *Annals*, or in Benton's *Abridgment*, II. The best account of events is in Henry Adams's *United States*, I., chaps. 13–17, II., chaps. 1–6. See also Jefferson's *Works* (ed. 1854), IV., 431–434, 456–459, 498–501, and further correspondence in V., VII., and VIII.

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ARTICLE I. Whereas, by the article the third of the treaty concluded at St. Idelfonso, the 9th Vendémiaire, an. 9 (1st October, 1800) between the First Consul of the French Republic and his Catholic Majesty, it was agreed as follows: "His Catholic Majesty promises and engages on his part, to cede to the French Republic, six months after the full and entire execution of the conditions and stipulations herein relative to his royal highness the duke of Parma, the colony or province of Louisiana. with the same extent that it now has in the hands of

Spain, and that it had when France possessed it; and such as it should be after the treaties subsequently entered into between Spain and other states." And *whereas*, in pursuance of the treaty, and particularly of the third article, the French Republic has an incontestible title to the domain and to the possession of the said territory: The First Consul of the French Republic desiring to give to the United States a strong proof of his friendship, doth hereby cede to the said United States, in the name of the French Republic, forever and in full sovereignty, the said territory with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French Republic, in virtue of the above-mentioned treaty, concluded with his Catholic Majesty.

ART. II. In the cession made by the preceding article are included the adjacent islands belonging to Louisiana, all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices which are not private property. — The archives, papers, and documents, relative to the domain and sovereignty of Louisiana, and its dependencies, will be left in the possession of the commissaries of the United States, and copies will be afterwards given in due form to the magistrates and municipal officers, of such of the said papers and documents as may be necessary to them.

ART. III. The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.

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ART. V. Immediately after the ratification of the present treaty by the President of the United States, and in case that of the First Consul shall have been previously obtained, the commissary of the French Republic shall remit all the military posts of New Orleans, and other parts of the ceded territory, to the commissary or commissaries named by the President to take possession; the troops, whether of France or Spain, who may be there, shall cease to occupy any military post from the time of

taking possession, and shall be embarked as soon as possible, in the course of three months after the ratification of this treaty.

ART. VI. The United States promise to execute such treaties and articles as may have been agreed between Spain and the tribes and nations of Indians, until, by mutual consent of the United States and the said tribes or nations, other suitable articles shall have been agreed upon.

ART. VII. As it is reciprocally advantageous to the commerce of France and the United States to encourage the communication of both nations for a limited time in the country ceded by the present treaty, until general arrangements relative to the commerce of both nations may be agreed on; it has been agreed between the contracting parties, that the French ships coming directly from France or any of her colonies, loaded only with the produce and manufactures of France or her said colonies; and the ships of Spain coming directly from Spain or any of her colonies, loaded only with the produce or manufactures of Spain or her colonies, shall be admitted during the space of twelve years in the ports of New Orleans, and in all other legal ports of entry within the ceded territory, in the same manner as the ships of the United States coming directly from France or Spain, or any of their colonies, without being subject to any other or greater duty on merchandize, or other or greater tonnage than that paid by the citizens of the United States.

During the space of time above mentioned, no other nation shall have a right to the same privileges in the ports of the ceded territory: . . . it is however well understood that the object of the above article is to favor the manufactures, commerce, freight and navigation of France and of Spain, so far as relates to the importations that the French and Spanish shall make into the said ports of the United States, without in any sort affecting the regulations that the United States may make concerning the exportation of the produce and merchandize of the United States, or any right they may have to make such regulations.

ART. VIII. In future and forever after the expiration of the twelve years, the ships of France shall be treated upon the footing of the most favored nations in the ports above mentioned.

ART. IX. The particular convention signed this day by the

respective ministers,[1] having for its object to provide for the payment of debts due to the citizens of the United States by the French Republic, prior to the 30th of September, 1800, (8th Vendémiaire, an. 9,) is approved, and to have its execution in the same manner as if it had been inserted in this present treaty; and it shall be ratified in the same form and in the same time, so that the one shall not be ratified distinct from the other.

Another particular convention[2] signed at the same date as the present treaty relative to a definitive rule between the contracting parties is in the like manner approved, and will be ratified in the same form, and in the same time, and jointly.

* * * * * * * *[3]

No. 66. Embargo Act

December 22, 1807

The provisions in the treaty of 1794 with Great Britain relative to neutral commerce expired by limitation in 1806. April 18, 1806, Congress passed an act prohibiting the importation of certain articles from Great Britain and her colonies after Nov. 15; but Dec. 19 the act was suspended until July 1, 1807. Great Britain also refused to give up her asserted right of impressment, and on Oct. 16, 1807, a proclamation was issued "for recalling and prohibiting British seamen from serving foreign Princes and States." In a message of Dec. 18, 1807, transmitting a copy of this proclamation, Jefferson urged the attention of Congress to "the advantages which may be expected from an inhibition of the departure of our vessels from the ports of the United States." A bill for an embargo was at once introduced in the Senate, and passed that body the same day, by a vote of 22 to 6. On the 21st the bill with amendments passed the House, by a vote of 82 to 44; on the 22d the amendments were concurred in by the Senate, and the act was approved. An act of April 22, 1808, authorized the President to suspend the embargo acts in the event of peace or suspension of hostilities between the European belligerents.

References. — *Text* in *U. S. Stat. at Large*, II., 451–453. For the discussions in Congress, see the *Annals*, 10th Cong., 1st Sess., I., or Benton's *Abridgment*, III. Numerous documents relating to British depredations on American commerce during this period are in *Amer. State Papers, Foreign Relations*, III.: see particularly the royal proclamation of Oct. 16, 1807, *ib.*, 25, 26; report of the Secretary of State, March 2, 1808, on impressment of

[1] *Text* in *Treaties and Conventions* (ed. 1889), 335–338. — Ed.
[2] *Text* in *Treaties and Conventions* (ed. 1889), 334, 335. — Ed.
[3] Signed: "Robert R. Livingstone, James Monroe, F. Barbé Marbois." — Ed.

American seamen, *ib.*, 36–79; and message of Dec. 28, 1808, transmitting orders and decrees of belligerent powers affecting neutral commerce since 1791, *ib.*, 262–294. For the various supplementary acts of Jan. 9, March 12, April 22, and April 25, 1808, and Jan. 9, 1809, see *U. S. Stat. at Large*, II., 453, 454, 473–475, 490, 499–502, 506–511; for judicial decisions under the acts, *ib.*, 451, 452. On the effect of the embargo, see Gallatin's annual report, Dec. 16, 1808, in *Amer. State Papers, Finance*, II., 307–309. Carey's *Olive Branch* (ed. 1815) collects numerous documents for this period. The best general account is in Adams's *United States*, IV.

An ACT laying an Embargo on all ships and vessels in the ports and harbors of the United States.

Be it enacted . . . , That an embargo be, and hereby is laid on all ships and vessels in the ports and places within the limits or jurisdiction of the United States, cleared or not cleared, bound to any foreign port or place; and that no clearance be furnished to any ship or vessel bound to such foreign port or place, except vessels under the immediate direction of the President of the United States: and that the President be authorized to give such instructions to the officers of the revenue, and of the navy and revenue cutters of the United States, as shall appear best adapted for carrying the same into full effect: *Provided*, that nothing herein contained shall be construed to prevent the departure of any foreign ship or vessel, either in ballast, or with the goods, wares and merchandise on board of such foreign ship or vessel, when notified of this act.

Sec. 2. *And be it further enacted*, That during the continuance of this act, no registered, or sea letter vessel, having on board goods, wares and merchandise, shall be allowed to depart from one port of the United States to any other within the same, unless the master, owner, consignee or factor of such vessel shall first give bond, with one or more sureties to the collector of the district from which she is bound to depart, in a sum of double the value of the vessel and cargo, that the said goods, wares, or merchandise shall be relanded in some port of the United States, dangers of the seas excepted, which bond, and also a certificate from the collector where the same may be relanded, shall by the collector respectively be transmitted to the Secretary of the Treasury. All armed vessels possessing public commissions from any foreign power, are not to be considered as liable to the embargo laid by this act.

No. 67. Non-Intercourse Act

March 1, 1809

During the early part of the session of 1808–9 the Federalists made unsuccessful attempts to secure the repeal of the embargo acts. In spite of its ruinous effect on American commerce, the embargo was still regarded with favor, except in New England. In February, 1809, however, the statement of J. Q. Adams regarding the dangerous condition of public feeling in New England led the Republican leaders to modify their policy. February 8 Wm. B. Giles of Virginia submitted in the Senate a resolution for the repeal of the embargo after March 4, except as to Great Britain and France, and to prohibit commercial intercourse with those nations. February 14, by a vote of 22 to 9, the resolution was agreed to, after an unsuccessful attempt, led by Bayard, to strike out the non-intercourse clause. A bill in conformity with the resolution was introduced on the 16th, and on the 21st passed the Senate by a vote of 21 to 12. A bill to the same effect had been introduced in the House Feb. 11, and was still under discussion; on the 22d, however, it was laid on the table, and the House took up the Senate bill in its place, finally passing it with amendments, on the 27th, by a vote of 81 to 40. The next day the Senate agreed to the House amendments, and March 1 the act was approved.

References. — *Text* in *U. S. Stat. at Large*, II., 528–533. The proceedings of Congress are in the *Journals*, 10th Cong., 2d Sess.; for the discussions, including debates on the embargo and its enforcement, and British and French aggressions, see the *Annals*, or Benton's *Abridgment*, IV. A digest of decisions under the non-intercourse acts is in *U. S. Stat. at Large*, II., 528.

An ACT to interdict the commercial intercourse between the United States and Great Britain and France, and their dependencies; and for other purposes.

Be it enacted . . . , That from and after the passing of this act, the entrance of the harbors and waters of the United States and of the territories thereof, be, and the same is hereby interdicted to all public ships and vessels belonging to Great Britain or France, excepting vessels only which may be forced in by distress, or which are charged with despatches or business from the government to which they belong, and also packets having no cargo nor merchandise on board. And if any public ship or vessel as aforesaid, not being included in the exception above mentioned, shall enter any harbor or waters within the jurisdiction of the United States, or of the territories thereof, it shall be lawful for the Presi-

dent of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land and naval forces, or of the militia of the United States, or the territories thereof, as he shall deem necessary, to compel such ship or vessel to depart.

SEC. 2. *And be it further enacted*, That it shall not be lawful for any citizen or citizens of the United States or the territories thereof, nor for any person or persons residing or being in the same, to have any intercourse with, or to afford any aid or supplies to any public ship or vessel as aforesaid, which shall, contrary to the provisions of this act, have entered any harbor or waters within the jurisdiction of the United States or the territories thereof; and if any person shall, contrary to the provisions of this act, have any intercourse with such ship or vessel, or shall afford any aid to such ship or vessel, either in repairing the said vessel or in furnishing her, her officers and crew with supplies of any kind or in any manner whatever, or if any pilot or other person shall assist in navigating or piloting such ship or vessel, unless it be for the purpose of carrying her beyond the limits and jurisdiction of the United States, every person so offending, shall forfeit and pay a sum not less than one hundred dollars, nor exceeding ten thousand dollars; and shall also be imprisoned for a term not less than one month, nor more than one year.

SEC. 3. *And be it further enacted*, That from and after the twentieth day of May next, the entrance of the harbors and waters of the United States and the territories thereof be, and the same is hereby interdicted to all ships or vessels sailing under the flag of Great Britain or France, or owned in whole or in part by any citizen or subject of either; vessels hired, chartered or employed by the government of either country, for the sole purpose of carrying letters or despatches, and also vessels forced in by distress or by the dangers of the sea, only excepted. And if any ship or vessel sailing under the flag of Great Britain or France, or owned in whole or in part by any citizen or subject of either, and not excepted as aforesaid, shall after the said twentieth day of May next, arrive either with or without a cargo, within the limits of the United States or of the territories thereof, such ship or vessel, together with the cargo, if any, which may be found on board, shall be forfeited, and may be seized and condemned in any court of

the United States or the territories thereof, having competent jurisdiction, and all and every act and acts heretofore passed, which shall be within the purview of this act, shall be, and the same are hereby repealed.

Sec. 4. *And be it further enacted*, That from and after the twentieth day of May next, it shall not be lawful to import into the United States or the territories thereof, any goods, wares or merchandise whatever, from any port or place situated in Great Britain or Ireland, or in any of the colonies or dependencies of Great Britain, nor from any port or place situated in France, or in any of her colonies or dependencies, nor from any port or place in the actual possession of either Great Britain or France. Nor shall it be lawful to import into the United States, or the territories thereof, from any foreign port or place whatever, any goods, wares or merchandise whatever, being of the growth, produce or manufacture of France, or of any of her colonies or dependencies, or being of the growth, produce or manufacture of Great Britain or Ireland, or of any of the colonies or dependencies of Great Britain, or being of the growth, produce or manufacture of any place or country in the actual possession of either France or Great Britain: *Provided*, that nothing herein contained shall be construed to affect the cargoes of ships or vessels wholly owned by a citizen or citizens of the United States, which had cleared for any port beyond the Cape of Good Hope, prior to . . . [December 22, 1807,] . . . or which had departed for such port by permission of the President, under the acts supplementary to the act laying an embargo on all ships and vessels in the ports and harbors of the United States.

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Sec. 11. *And be it further enacted*, That the President of the United States be, and he hereby is authorized, in case either France or Great Britain shall so revoke or modify her edicts, as that they shall cease to violate the neutral commerce of the United States, to declare the same by proclamation; after which the trade of the United States, suspended by this act, and by the . . . [Embargo Act] . . . and the several acts supplementary thereto, may be renewed with the nation so doing:[1] . . .

Sec. 12. *And be it further enacted*, That so much of the . . .

[1] See act of March 2, 1811 (*Stat. at Large*, II., 651, 652). — Ed.

[Embargo Act] . . . and of the several acts supplementary thereto, as forbids the departure of vessels owned by citizens of the United States, and the exportation of domestic and foreign merchandise to any foreign port or place, be and the same is hereby repealed, after . . . [March 15, 1809,] . . . except so far as they relate to Great Britain or France, or their colonies or dependencies, or places in the actual possession of either. . . .

SEC. 13. *And be it further enacted*, That during the continuance of so much of the . . . [Embargo Act], . . . and of the several acts supplementary thereto, as is not repealed by this act, no ship or vessel bound to a foreign port, with which commercial intercourse shall, by virtue of this act, be again permitted, shall be allowed to depart for such port, unless the owner or owners, consignee or factor of such ship or vessel shall, with the master, have given bond with one or more sureties to the United States, in a sum double the value of the vessel and cargo, if the vessel is wholly owned by a citizen or citizens of the United States; and in a sum four times the value, if the vessel is owned in part or in whole by any foreigner or foreigners, that the vessel shall not leave the port without a clearance, nor shall, when leaving the port, proceed to any port or place in Great Britain or France, or in the colonies or dependencies of either, or in the actual possession of either, nor be directly or indirectly engaged during the voyage in any trade with such port, nor shall put any article on board of any other vessel; nor unless every other requisite and provision of the second section of the act, intituled "An act to enforce and make more effectual an act, intituled An act laying an embargo on all ships and vessels in the ports and harbors of the United States, and the several acts supplementary thereto,"[1] shall have been complied with. . . .

SEC. 14. *And be it further enacted*, That so much of the . . . [Embargo Act] . . . and of the several acts supplementary thereto, as compels vessels owned by citizens of the United States, bound to another port of the said States, or vessels licensed for the coasting trade, or boats, either not masted or not decked, to give bond, and to load under the inspection of a revenue officer, or renders them liable to detention, merely on account of the nature of their cargo, (such provisions excepted as relate to collection districts

[1] Act of Jan. 9, 1809 (*Stat. at Large*, II., 506–511). — ED.

adjacent to the territories, colonies or provinces of a foreign nation, or to vessels belonging or bound to such districts) be, and the same is hereby repealed, from and after . . . [March 15, 1809] . . .

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[SEC. 17 repeals act of April 18, 1806, and supplementary act, after May 20.]

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SEC. 19. *And be it further enacted*, That this act shall continue and be in force until the end of the next session of Congress, and no longer; and that the act laying an embargo on all ships and vessels in the ports and harbors of the United States, and the several acts supplementary thereto, shall be, and the same are hereby repealed from and after the end of the next session of Congress.

No. 68. Declaration of War

June 18, 1812

MADISON'S message of June 1 was referred in the House to the Committee on Foreign Relations. June 3 Calhoun reported from the committee a bill declaring war between the United States and Great Britain. The bill passed the House the following day by a vote of 79 to 49, after strong opposition. The bill with amendments was reported by a select committee of the Senate on the 8th; on the 11th, by a vote of 17 to 13, it was recommitted. Several amendments were reported on the 12th, but were rejected by a tie vote; and by vote of 21 to 11 the first report of the committee, with amendments, was agreed to. Determined efforts were made to postpone or further amend the bill, but without success, and on the 17th the bill passed, by a vote of 19 to 13. On the 18th the House concurred in the Senate amendments, and on the same day the act was approved. A proclamation announcing the existence of war was issued June 19.

REFERENCES. — *Text* in *U. S. Stat. at Large*, II., 755. For the proceedings, see the *House and Senate Supplementary Journals*, 12th Cong., 1st Sess. The discussions are reported briefly in the *Annals*, and in Benton's *Abridgment*, IV. Calhoun's report is in *Amer. State Papers, Foreign Relations*, III., 567–570. The Orders in Council were withdrawn June 16; for the announcement, June 23, see *Annual Register*, 1812, pp. 379–381. There is an analysis by States of the vote in the House, June 4, in McMaster's *United States*, III., 457, 458. For the address of the Federalist minority to their constituents, see the *Annals*, 2106–2221.

An Act declaring War between the United Kingdom of Great Britain and Ireland and the dependencies thereof, and the United States of America and their territories.

Be it enacted . . . , That war be and the same is hereby declared to exist between the United Kingdom of Great Britain and Ireland and the dependencies thereof, and the United States of America and their territories; and that the President of the United States is hereby authorized to use the whole land and naval force of the United States to carry the same into effect, and to issue to private armed vessels of the United States commissions or letters of marque and general reprisal, in such form as he shall think proper, and under the seal of the United States, against the vessels, goods, and effects of the government of the said United Kingdom of Great Britain and Ireland, and the subjects thereof.

No. 69. Treaty of Ghent

December 24, 1814

THE offer of the Emperor of Russia to mediate between Great Britain and the United States was accepted by the latter, and on April 15, 1813, instructions were issued to commissioners. Great Britain, however, declined the offer of mediation, and suggested direct negotiation; the suggestion was accepted, additional commissioners were appointed, and new instructions issued Jan. 28, 1814. The commissioners held their first conference at Ghent July 11. The treaty was concluded Dec. 24; Feb. 17, 1815, ratifications were exchanged at Washington. The conclusion of the treaty was announced to Congress Feb. 20.

REFERENCES. — *Text* in *U. S. Stat. at Large*, VIII., 218–223. The diplomatic correspondence is in *Amer. State Papers, Foreign Relations*, III., 695–748; IV., 808–811. For dispatches and instructions of the British commissioners, see the *Castlereagh Correspondence*, series III., vol. II. The diary of J. Q. Adams during the negotiations is in his *Memoirs*, II., 603–662; III., 3–144. Clay's letters are in Colton's *Private Correspondence of Henry Clay*, 24–44; Gallatin's, in Adams's *Writings of Gallatin*, I., 545–647. See also *Treaties and Conventions* (ed. 1889), 1326–1328, notes on the treaty by J. C. B. Davis.

ARTICLE THE FIRST.

There shall be a firm and universal peace between His Britannic Majesty and the United States, and between their respective

countries, territories, cities, towns, and people, of every degree, without exception of places or persons. All hostilities, both by sea and land, shall cease as soon as this treaty shall have been ratified by both parties, as hereinafter mentioned. All territory, places, and possessions whatsoever, taken by either party from the other, during the war, or which may be taken after the signing of this treaty, excepting only the islands hereinafter mentioned, shall be restored without delay, and without causing any destruction, or carrying away any of the artillery or other public property originally captured in the said forts or places, and which shall remain therein upon the exchange of the ratifications of this treaty, or any slaves or other private property. And all archives, records, deeds, and papers, either of a public nature, or belonging to private persons, which, in the course of the war, may have fallen into the hands of the officers of either party, shall be, as far as may be practicable, forthwith restored and delivered to the proper authorities and persons to whom they respectively belong. Such of the islands in the Bay of Passamaquoddy as are claimed by both parties, shall remain in the possession of the party in whose occupation they may be at the time of the exchange of the ratifications of this treaty, until the decision respecting the title to the said islands shall have been made in conformity with the fourth article of this treaty. No disposition made by this treaty, as to such possession of the islands and territories claimed by both parties, shall, in any manner whatever, be construed to affect the right of either.

* * * * * * * *

Article the Fourth.

Whereas it was stipulated by the second article in the treaty of peace . . . [of 1783] . . . that the boundary of the United States should comprehend all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries, between Nova Scotia, on the one part, and East Florida on the other, shall respectively touch the Bay of Fundy, and the Atlantic ocean, excepting such islands as now are, or heretofore have been, within the limits of Nova Scotia; and whereas the several islands in the Bay of Passamaquoddy, which is part of the Bay of Fundy,

and the island of Grand Menan in the said Bay of Fundy, are claimed by the United States as being comprehended within their aforesaid boundaries, which said islands are claimed as belonging to his Britannic Majesty, as having been at the time of, and previous to, the aforesaid treaty . . . , within the limits of the province of Nova-Scotia: In order, therefore, finally to decide upon these claims, it is agreed that they shall be referred to two commissioners to be appointed in the following manner, viz: one commissioner shall be appointed by his Britannic Majesty, and one by the president of the United States, by and with the advice and consent of the Senate thereof . . . [The commissioners to meet at St. Andrews, N. B. In case of disagreement, the matter to be referred to the decision of some friendly Power.[1]]

ARTICLE THE FIFTH.

Whereas neither that point of the high lands lying due north from the source of the river St. Croix, and designated in the former treaty of peace between the two powers as the northwest angle of Nova-Scotia, nor the northwesternmost head of Connecticut river, has yet been ascertained; and whereas that part of the boundary line between the dominions of the two powers which extends from the source of the river St. Croix directly north to the abovementioned northwest angle of Nova-Scotia, thence along the said highlands which divide those rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic ocean to the northwesternmost head of Connecticut river, thence down along the middle of that river to the forty-fifth degree of north latitude; thence by a line due west on said latitude until it strikes the river Iroquois or Cataraguy, has not yet been surveyed: it is agreed, that for these several purposes two commissioners shall be appointed, sworn, and authorized to act exactly in the manner directed with respect to those mentioned in the next preceding article, unless otherwise specified in the present article. [The commissioners to meet at St. Andrews, N. B. Boundary to be surveyed and marked. In case of disagreement, the matter to be referred to the decision of some friendly Power, as in Art. IV.]

[1] For the declaration and decision of the commissioners under this article Nov. 24, 1817, see *Treaties and Conventions* (ed. 1889), 405, 406. — ED.

Article the Sixth.

Whereas, by the former treaty of peace that portion of the boundary of the United States from the point where the forty-fifth degree of north latitude strikes the river Iroquois or Cataraguy to the lake Superior, was declared to be "along the middle of said river into lake Ontario, through the middle of said lake until it strikes the communication by water between that lake and lake Erie, thence along the middle of said communication into lake Erie, through the middle of said lake until it arrives at the water communication into the lake Huron, thence through the middle of said lake to the water communication between that lake and lake Superior." And whereas doubts have arisen what was the middle of the said river, lakes and water communications, and whether certain islands lying in the same were within the dominions of his Britannic majesty or of the United States: In order, therefore, finally to decide these doubts, they shall be referred to two commissioners, to be appointed, sworn, and authorized to act exactly in the manner directed with respect to those mentioned in the next preceding article, unless otherwise specified in this present article. [The commissioners to meet at Albany. Boundary to be designated. In case of disagreement, the matter to be referred to the decision of some friendly power, as in Art. IV.[1]]

Article the Seventh.

[The commissioners provided for in Art. VI. to determine the boundary between Lakes Huron and Superior and the Lake of the Woods. In case of disagreement, the matter to be referred to the decision of some friendly Power, as in Art. IV.]

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Article the Ninth.

The United States of America engage to put an end, immediately after the ratification of the present treaty, to hostilities with all the tribes or nations of Indians with whom they may be at war

[1] For the decision of the commissioners under this article, June 22, 1822, see *Treaties and Conventions* (ed. 1889), 407–409. — Ed.

at the time of such ratification; and forthwith to restore to such tribes or nations, respectively, all the possessions, rights, and privileges, which they may have enjoyed or been entitled to in . . . [1811] . . . , previous to such hostilities: *Provided always*, That such tribes or nations shall agree to desist from all hostilities, against the United States of America, their citizens and subjects, upon the ratification of the present treaty being notified to such tribes or nations, and shall so desist accordingly. And his Britannic Majesty engages, on his part, to put an end immediately after the ratification of the present treaty, to hostilities with all the tribes or nations of Indians with whom he may be at war at the time of such ratification, and forthwith to restore to such tribes or nations, respectively, all the possessions, rights, and privileges, which they may have enjoyed or been entitled to, in . . . [1811] . . . , previous to such hostilities: *Provided always*, that such tribes or nations shall agree to desist from all hostilities against his Britannic majesty, and his subjects, upon the ratification of the present treaty being notified to such tribes or nations, and shall so desist accordingly.

ARTICLE THE TENTH.

Whereas the traffic in slaves is irreconcileable with the principles of humanity and justice, and whereas both his Majesty and the United States are desirous of continuing their efforts to promote its entire abolition, it is hereby agreed that both the contracting parties shall use their best endeavors to accomplish so desirable an object.

* * * * * * * *[1]

No. 70. Report of the Hartford Convention

January 4, 1815

EARLY in 1814 many towns in Massachusetts presented memorials to the legislature, setting forth the dangers to which the war with Great Britain exposed them, and suggesting the appointment of delegates, "to meet delegates from such other States as might think proper to appoint them, for the purpose

[1] Signed: "Gambier, Henry Goulburn, William Adams, John Quincy Adams, J. A. Bayard, H. Clay, Jona. Russell, Albert Gallatin." — ED.

of devising proper measures to procure the united efforts of the commercial states, to obtain such amendments and explanations of the constitution as will secure them from further evils" (Dwight). The matter was favorably considered by the legislature, and Oct. 18 twelve delegates were elected in a joint session of the two houses, by a vote of 226 to 67. The action of Massachusetts was followed by the election of seven delegates by the legislature of Connecticut, which already had under consideration suggestions of a similar nature, and of four delegates by the legislature of Rhode Island. The delegates thus chosen, together with two from New Hampshire and one from Vermont, representing local conventions in those States, met at Hartford Dec. 15, and remained in session until Jan. 5, 1815. The proceedings of the convention were secret, but the report, from which an extract follows, was published and widely circulated. The legislatures of Massachusetts and Connecticut sent commissioners to Washington to urge the submission of the amendments to the Constitution suggested by the convention; but the war had ended before they arrived, and their recommendations were disregarded. The injunction of secrecy laid upon the members of the convention, and the failure to make public the journal, led to the impression that the proceedings were of a treasonable nature, and had in view a dissolution of the Union.

References. — *Text* in Dwight's *History of the Hartford Convention* (ed. 1833), 352–379; the extract here given is on pp. 368–379. The report is also in *Niles's Register*, VII., 305–313, where are also, pp. 328–332, commercial and financial statistics published by order of the convention. The journal is also in Dwight, *op. cit.*, 383–398. R. M. Sherman's account of the convention is in *Niles's Register*, XXXIX., 434, 435; see also *ib.*, VII., 185–189, 193–197, 257, 258, 321–326, 337, 338, 369–371, a series of articles hostile to the convention.

[After severe general criticism of the Administration, and of the policy by which "this remote country, once so happy and so envied," is now "involved in a ruinous war, and excluded from intercourse with the rest of the world," the report continues:]

To investigate and explain the means whereby this fatal reverse has been effected, would require a voluminous discussion. Nothing more can be attempted in this report than a general allusion to the principal outlines of the policy which has produced this vicissitude. Among these may be enumerated —

First. — A deliberate and extensive system for effecting a combination among certain states, by exciting local jealousies and ambition, so as to secure to popular leaders in one section of the Union, the controul of public affairs in perpetual succession. To which primary object most other characteristics of the system may be reconciled.

Secondly. — The political intolerance displayed and avowed in

excluding from office men of unexceptionable merit, for want of adherence to the executive creed.

Thirdly. — The infraction of the judiciary authority and rights, by depriving judges of their offices in violation of the constitution.

Fourthly. — The abolition of existing taxes, requisite to prepare the country for those changes to which nations are always exposed, with a view to the acquisition of popular favour.

Fifthly. — The influence of patronage in the distribution of offices, which in these states has been almost invariably made among men the least entitled to such distinction, and who have sold themselves as ready instruments for distracting public opinion, and encouraging administration to hold in contempt the wishes and remonstrances of a people thus apparently divided.

Sixthly. — The admission of new states into the Union formed at pleasure in the western region, has destroyed the balance of power which existed among the original States, and deeply affected their interest.

Seventhly. — The easy admission of naturalized foreigners, to places of trust, honour or profit, operating as an inducement to the malcontent subjects of the old world to come to these States, in quest of executive patronage, and to repay it by an abject devotion to executive measures.

Eighthly. — Hostility to Great Britain, and partiality to the late government of France, adopted as coincident with popular prejudice, and subservient to the main object, party power. Connected with these must be ranked erroneous and distorted estimates of the power and resources of those nations, of the probable results of their controversies, and of our political relations to them respectively.

Lastly and principally. — A visionary and superficial theory in regard to commerce, accompanied by a real hatred but a feigned regard to its interests, and a ruinous perseverance in efforts to render it an instrument of coercion and war.

But it is not conceivable that the obliquity of any administration could, in so short a period, have so nearly consummated the work of national ruin, unless favoured by defects in the constitution.

To enumerate all the improvements of which that instrument is

susceptible, and to propose such amendments as might render it in all respects perfect, would be a task which this convention has not thought proper to assume. They have confined their attention to such as experience has demonstrated to be essential, and even among these, some are considered entitled to a more serious attention than others. They are suggested without any intentional disrespect to other states, and are meant to be such as all shall find an interest in promoting. Their object is to strengthen, and if possible to perpetuate, the union of the states, by removing the grounds of existing jealousies, and providing for a fair and equal representation, and a limitation of powers, which have been misused.

The first amendment proposed, relates to the apportionment of representatives among the slave holding states. This cannot be claimed as a right. Those states are entitled to the slave representation, by a constitutional compact. It is therefore merely a subject of agreement, which should be conducted upon principles of mutual interest and accommodation, and upon which no sensibility on either side should be permitted to exist. It has proved unjust and unequal in its operation. Had this effect been foreseen, the privilege would probably not have been demanded; certainly not conceded. Its tendency in future will be adverse to that harmony and mutual confidence which are more conducive to the happiness and prosperity of every confederated state, than a mere preponderance of power, the prolific source of jealousies and controversy, can be to any one of them. The time may therefore arrive, when a sense of magnanimity and justice will reconcile those states to acquiesce in a revision of this article, especially as a fair equivalent would result to them in the apportionment of taxes.

The next amendment relates to the admission of new states into the Union.

This amendment is deemed to be highly important, and in fact indispensable. In proposing it, it is not intended to recognize the right of Congress to admit new states without the original limits of the United States, nor is any idea entertained of disturbing the tranquillity of any state already admitted into the Union. The object is merely to restrain the constitutional power of Congress in admitting new states. At the adoption of the constitution,

a certain balance of power among the original parties was considered to exist, and there was at that time, and yet is among those parties, a strong affinity between their great and general interests. — By the admission of these states that balance has been materially affected, and unless the practice be modified, must ultimately be destroyed. The southern states will first avail themselves of their new confederates to govern the east, and finally the western states, multiplied in number, and augmented in population, will control the interests of the whole. Thus for the sake of present power, the southern states will be common sufferers with the east, in the loss of permanent advantages. None of the old states can find an interest in creating prematurely an overwhelming western influence, which may hereafter discern (as it has heretofore) benefits to be derived to them by wars and commercial restrictions.

The next amendments proposed by the convention, relate to the powers of Congress, in relation to embargo and the interdiction of commerce.

Whatever theories upon the subject of commerce have hitherto divided the opinions of statesmen, experience has at last shown that it is a vital interest in the United States, and that its success is essential to the encouragement of agriculture and manufactures, and to the wealth, finances, defence, and liberty of the nation. Its welfare can never interfere with the other great interests of the state, but must promote and uphold them. Still those who are immediately concerned in the prosecution of commerce, will of necessity be always a minority of the nation. They are, however, best qualified to manage and direct its course by the advantages of experience, and the sense of interest. But they are entirely unable to protect themselves against the sudden and injudicious decisions of bare majorities, and the mistaken or oppressive projects of those who are not actively concerned in its pursuits. Of consequence, this interest is always exposed to be harassed, interrupted, and entirely destroyed, upon pretence of securing other interests. Had the merchants of this nation been permitted by their own government to pursue an innocent and lawful commerce, how different would have been the state of the treasury and of public credit! How short-sighted and miserable is the policy which has annihilated this order of men, and doomed their ships to rot in the docks, their capital to waste unemployed, and their

affections to be alienated from the government which was formed to protect them! What security for an ample and unfailing revenue can ever be had, comparable to that which once was realized in the good faith, punctuality, and sense of honour, which attached the mercantile class to the interests of the government! Without commerce, where can be found the aliment for a navy; and without a navy, what is to constitute the defence, and ornament, and glory of this nation! No union can be durably cemented, in which every great interest does not find itself reasonably secured against the encroachment and combinations of other interests. When, therefore, the past system of embargoes and commercial restrictions shall have been reviewed — when the fluctuation and inconsistency of public measures, betraying a want of information as well as feeling in the majority, shall have been considered, the reasonableness of some restrictions upon the power of a bare majority to repeat these oppressions, will appear to be obvious.

The next amendment proposes to restrict the power of making offensive war. In the consideration of this amendment, it is not necessary to inquire into the justice of the present war. But one sentiment now exists in relation to its expediency, and regret for its declaration is nearly universal. No indemnity can ever be attained for this terrible calamity, and its only palliation must be found in obstacles to its future recurrence. Rarely can the state of this country call for or justify offensive war. The genius of our institutions is unfavourable to its successful prosecution; the felicity of our situation exempts us from its necessity. In this case, as in the former, those more immediately exposed to its fatal effects are a minority of the nation. The commercial towns, the shores of our seas and rivers, contain the population whose vital interests are most vulnerable by a foreign enemy. Agriculture, indeed, must feel at last, but this appeal to its sensibility comes too late. Again, the immense population which has swarmed into the west, remote from immediate danger, and which is constantly augmenting, will not be averse from the occasional disturbances of the Atlantic states. Thus interest may not unfrequently combine with passion and intrigue, to plunge the nation into needless wars, and compel it to become a military, rather than a happy and flourishing people. These considerations, which

it would be easy to augment, call loudly for the limitation proposed in the amendment.

Another amendment, subordinate in importance, but still in a high degree expedient, relates to the exclusion of foreigners hereafter arriving in the United States from the capacity of holding offices of trust, honour, or profit.

That the stock of population already in these states is amply sufficient to render this nation in due time sufficiently great and powerful, is not a controvertible question. Nor will it be seriously pretended, that the national deficiency in wisdom, arts, science, arms, or virtue, needs to be replenished from foreign countries. Still, it is agreed, that a liberal policy should offer the rights of hospitality, and the choice of settlement, to those who are disposed to visit the country. But why admit to a participation in the government aliens who were no parties to the compact — who are ignorant of the nature of our institutions, and have no stake in the welfare of the country but what is recent and transitory? It is surely a privilege sufficient, to admit them after due probation to become citizens, for all but political purposes. To extend it beyond these limits, is to encourage foreigners to come to these states as candidates for preferment. The Convention forbear to express their opinion upon the inauspicious effects which have already resulted to the honour and peace of this nation, from this misplaced and indiscriminate liberality.

The last amendment respects the limitation of the office of President to a single constitutional term, and his eligibility from the same state two terms in succession.

Upon this topic it is superfluous to dilate. The love of power is a principle in the human heart which too often impels to the use of all practicable means to prolong its duration. The office of President has charms and attractions which operate as powerful incentives to this passion. The first and most natural exertion of a vast patronage is directed towards the security of a new election. The interest of the country, the welfare of the people, even honest fame and respect for the opinion of posterity, are secondary considerations. All the engines of intrigue, all the means of corruption are likely to be employed for this object. A President whose political career is limited to a single election, may find no other interest than will be promoted by making it glorious to him-

self, and beneficial to his country. But the hope of re-election is prolific of temptations, under which these magnanimous motives are deprived of their principal force. The repeated election of the President of the United States from any one state, affords inducements and means for intrigues, which tend to create an undue local influence, and to establish the domination of particular states. The justice, therefore, of securing to every state a fair and equal chance for the election of this officer from its own citizens is apparent, and this object will be essentially promoted by preventing an election from the same state twice in succession.

* * * * * * * *

THEREFORE RESOLVED,

That it be and hereby is recommended to the legislatures of the several states represented in this Convention, to adopt all such measures as may be necessary effectually to protect the citizens of said states from the operation and effects of all acts which have been or may be passed by the Congress of the United States, which shall contain provisions, subjecting the militia or other citizens to forcible drafts, conscriptions, or impressments, not authorised by the constitution of the United States.

Resolved, That it be and hereby is recommended to the said Legislatures, to authorize an immediate and earnest application to be made to the government of the United States, requesting their consent to some arrangement, whereby the said states may, separately or in concert, be empowered to assume upon themselves the defence of their territory against the enemy; and a reasonable portion of the taxes, collected within said States, may be paid into the respective treasuries thereof, and appropriated to the payment of the balance due said states, and to the future defence of the same. The amount so paid into the said treasuries to be credited, and the disbursements made as aforesaid to be charged to the United States.

Resolved, That it be, and hereby is, recommended to the legislatures of the aforesaid states, to pass laws (where it has not already been done) authorizing the governors or commanders-in-chief of their militia to make detachments from the same, or to form voluntary corps, as shall be most convenient and conformable to their constitutions, and to cause the same to be well armed, equipped, and disciplined, and held in readiness for service; and

upon the request of the governor of either of the other states to employ the whole of such detachment or corps, as well as the regular forces of the state, or such part thereof as may be required and can be spared consistently with the safety of the state, in assisting the state, making such request to repel any invasion thereof which shall be made or attempted by the public enemy.

Resolved, That the following amendments of the constitution of the United States be recommended to the states represented as aforesaid, to be proposed by them for adoption by the state legislatures, and in such cases as may be deemed expedient by a convention chosen by the people of each state.

And it is further recommended, that the said states shall persevere in their efforts to obtain such amendments, until the same shall be effected.

First. Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers of free persons, including those bound to serve for a term of years, and excluding Indians not taxed, and all other persons.

Second. No new state shall be admitted into the Union by Congress, in virtue of the power granted by the constitution, without the concurrence of two thirds of both houses.

Third. Congress shall not have power to lay any embargo on the ships or vessels of the citizens of the United States, in the ports or harbours thereof, for more than sixty days.

Fourth. Congress shall not have power, without the concurrence of two thirds of both houses, to interdict the commercial intercourse between the United States and any foreign nation, or the dependencies thereof.

Fifth. Congress shall not make or declare war, or authorize acts of hostility against any foreign nation, without the concurrence of two thirds of both houses, except such acts of hostility be in defence of the territories of the United States when actually invaded.

Sixth. No person who shall hereafter be naturalized, shall be eligible as a member of the senate or house of representatives of the United States, nor capable of holding any civil office under the authority of the United States.

Seventh. The same person shall not be elected president of

the United States a second time; nor shall the president be elected from the same state two terms in succession.

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No. 71. Act for a National Bank

April 10, 1816

THE charter of the first bank of the United States expired in 1811, and the effort to renew it was unsuccessful. A bill to incorporate a bank was vetoed by Madison Jan. 30, 1815. In his annual message, Dec. 5, 1815, Madison urged the necessity of an uniform national currency, and suggested a national bank. In the House this part of the message was referred to a select committee, of which Calhoun was chairman, and Jan. 8, 1816, Calhoun reported a bill to incorporate the subscribers to the Bank of the United States. The bill was not taken up until Feb. 26; it was then considered at nearly every session until March 14, when it passed by a vote of 80 to 71. The bill with amendments passed the Senate April 3, by a vote of 22 to 12. April 5 the House concurred in the Senate amendments; on the 10th the act was approved. Only the significant portions of the act are here given.

REFERENCES. — *Text* in *U. S. Stat. at Large*, III., 266–277. For the proceedings see the *House and Senate Journals*, 14th Cong., 1st Sess.; for the discussions see the *Annals*, or Benton's *Abridgment*, V. The speeches of Calhoun, Clay, and Webster (the latter against the bank) are of especial importance. The letter of Dallas, Secretary of the Treasury, to Calhoun, outlining a plan for a national bank, is in *Amer. State Papers, Finance*, III., 57–61; the act followed in the main Dallas's suggestions. The veto message of Jan. 30, 1815, with the text of the bill, is in *Amer. State Papers, Finance*, II., 891–895; Spencer's report in the House, Jan. 16, 1819, on the conduct of the bank, *ib.*, III., 306–391; the petition of the bank for changes in its charter, Jan. 12, 1821, *ib.*, III., 586–594. The definitive history is Catterall's *Second Bank of the United States*. On the constitutionality of a national bank the leading case is McCulloch *v.* Maryland, 4 *Wheaton*, 316–437. Most of the discussion over the bank belongs to a later period.

An Act to incorporate the subscribers to the Bank of the United States.

Be it enacted . . . , That a bank of the United States of America shall be established, with a capital of thirty-five millions of dollars, divided into three hundred and fifty thousand shares, of one hundred dollars each share. Seventy thousand shares, amounting to the sum of seven millions of dollars, part of the capital of the said bank, shall be subscribed and paid for by the United States, in the manner hereinafter specified; and two hundred and eighty

thousand shares, amounting to the sum of twenty-eight millions of dollars, shall be subscribed and paid for by individuals, companies, or corporations, in the manner hereinafter specified. . . .

SEC. 8. *And be it further enacted*, That for the management of the affairs of the said corporation, there shall be twenty-five directors, five of whom, being stockholders, shall be annually appointed by the President of the United States, by and with the advice and consent of the Senate, not more than three of whom shall be residents of any one state; and twenty of whom shall be annually elected at the banking house in the city of Philadelphia, on the first Monday of January, in each year, by the qualified stockholders of the capital of the said bank, other than the United States, and by a plurality of votes then and there actually given, according to the scale of voting hereinafter prescribed: *Provided always*, That no person, being a director in the bank of the United States, or any of its branches, shall be a director of any other bank . . .

SEC. 9. *And be it further enacted*, . . . And the President of the United States is hereby authorized, during the present session of Congress, to nominate, and, by and with the advice and consent of the Senate, to appoint, five directors of the said bank, though not stockholders, any thing in the provisions of this act to the contrary notwithstanding . . .

SEC. 11. *And be it further enacted*, That the following rules, restrictions, limitations, and provisions, shall form and be fundamental articles of the constitution of the said corporation, to wit:

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Eighth. The total amount of debts which the said corporation shall at any time owe, whether by bond, bill, note, or other contract, over and above the debt or debts due for money deposited in the bank, shall not exceed the sum of thirty-five millions of dollars, unless the contracting of any greater debt shall have been previously authorized by law of the United States. . . .

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Ninth. The said corporation shall not, directly or indirectly, deal or trade in any thing except bills of exchange, gold or silver bullion, or in the sale of goods really and truly pledged for money lent and not redeemed in due time, or goods which shall be the proceeds of its lands. It shall not be at liberty to purchase any

public debt whatsoever, nor shall it take more than at the rate of six per centum per annum for or upon its loans or discounts.

Tenth. No loan shall be made by the said corporation, for the use or on account of the government of the United States, to an amount exceeding five hundred thousand dollars, or of any particular state, to an amount exceeding fifty thousand dollars, or of any foreign prince or state, unless previously authorized by a law of the United States.

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Fourteenth. The directors of the said corporation shall establish a competent office of discount and deposit in the District of Columbia, whenever any law of the United States shall require such an establishment; also one such office of discount and deposit in any state in which two thousand shares shall have been subscribed or may be held, whenever, upon application of the legislature of such state, Congress may, by law, require the same: . . . And it shall be lawful for the directors of the said corporation to establish offices of discount and deposit, wheresoever they shall think fit, within the United States or the territories thereof, and to commit the management of the said offices, and the business thereof, respectively to such persons, and under such regulations as they shall deem proper, not being contrary to law or the constitution of the bank. Or instead of establishing such offices, it shall be lawful for the directors of the said corporation, from time to time, to employ any other bank or banks, to be first approved by the Secretary of the Treasury, at any place or places that they may deem safe and proper, to manage and transact the business proposed as aforesaid, other than for the purposes of discount, to be managed and transacted by such offices, under such agreements, and subject to such regulations, as they shall deem just and proper. . . .

Fifteenth. The officer at the head of the Treasury Department of the United States shall be furnished, from time to time, as often as he may require, not exceeding once a week, with statements of the amount of the capital stock of the said corporation and of the debts due to the same; of the moneys deposited therein; of the notes in circulation, and of the specie in hand; and shall have a right to inspect such general accounts in the books of the bank as shall relate to the said statement: *Provided,* That this shall not

be construed to imply a right of inspecting the account of any private individual or individuals with the bank. . . .

SEC. 14. *And be it further enacted*, That the bills or notes of the said corporation originally made payable, or which shall have become payable on demand, shall be receivable in all payments to the United States, unless otherwise directed by act of Congress.

SEC. 15. *And be it further enacted*, That during the continuance of this act, and whenever required by the Secretary of the Treasury, the said corporation shall give the necessary facilities for transferring the public funds from place to place, within the United States, or the territories thereof, and for distributing the same in payment of the public creditors, without charging commissions or claiming allowance on account of difference of exchange, and shall also do and perform the several and respective duties of the commissioners of loans for the several states, or of any one or more of them, whenever required by law.

SEC. 16. *And be it further enacted*, That the deposits of the money of the United States, in places in which the said bank and branches thereof may be established, shall be made in said bank or branches thereof, unless the Secretary of the Treasury shall at any time otherwise order and direct; in which case the Secretary of the Treasury shall immediately lay before Congress, if in session, and if not, immediately after the commencement of the next session, the reasons of such order or direction.

SEC. 17. *And be it further enacted*, That the said corporation shall not at any time suspend or refuse payment in gold and silver, of any of its notes, bills or obligations; nor of any moneys received upon deposit in said bank, or in any of its offices of discount and deposit. . . .

SEC. 20. *And be it further enacted*, That in consideration of the exclusive privileges and benefits conferred by this act, upon the said bank, the president, directors, and company thereof, shall pay to the United States, out of the corporate funds thereof, the sum of one million and five hundred thousand dollars, in three equal payments; that is to say: five hundred thousand dollars at the expiration of two years; five hundred thousand dollars at the expiration of three years; and five hundred thousand dollars at the expiration of four years after the said bank shall be organized, and commence its operations in the manner herein before provided.

SEC. 21. *And be it further enacted*, That no other bank shall be established by any future law of the United States during the continuance of the corporation hereby created, for which the faith of the United States is hereby pledged . . . [except in the District of Columbia]. . . .

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No. 72. Treaty with Spain for the Floridas

February 22, 1819

PARTLY because of disputes regarding claims, and partly because of the establishment by the United States of a customs district which included Mobile, the King of Spain refused to ratify the treaty of 1802. Efforts to adjust the differences between the two countries failed, and in 1808 diplomatic relations were broken off. October 27, 1810, Madison by proclamation directed Claiborne, governor of Orleans Territory, to take possession of West Florida for the United States, and secret acts of Jan. 15 and March 3, 1811, authorized the President to take temporary possession of East Florida. Diplomatic relations were resumed in 1815, and a long correspondence followed, ending in the treaty of Feb. 22, 1819. The treaty was not ratified by Spain until Oct. 24, 1820, and was again ratified by the Senate Feb. 19, 1821. An act of March 3, 1821, authorized the President to take possession of East and West Florida in accordance with the treaty.

REFERENCES. — English and Spanish *text* in *U. S. at Large*, VIII., 252–264. The diplomatic correspondence is in *Amer. State Papers, Foreign Relations*, IV., V., and *Annals*, 15th Cong., 2d Sess., II., appendix. For important contemporary views, see J. Q. Adams's *Memoirs*, IV., V.; Benton's *Thirty Years' View*, I., chap. 6; II., chaps. 42, 155; Clay's speech on the treaty, in his *Life and Speeches* (ed. 1844), I., 392–404; and various letters of Gallatin, in his *Writings* (Adams's ed.), II. See also Wharton's *Intern. Law Digest* (ed. 1887), II., 277–287; Donaldson's *Public Domain*, 108–120 (H. Misc. Doc., 47th Cong., 2d Sess., vol. 19).

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ARTICLE 1.

There shall be a firm and inviolable peace and sincere friendship between the United States and their citizens, and his Catholic Majesty, his successors and subjects, without exception of persons or places.

ARTICLE 2.

His Catholic Majesty cedes to the United States, in full property and sovereignty, all the territories which belong to him, situated to the eastward of the Mississippi, known by the name of East and West Florida. . . .

ARTICLE 3.

The boundary line between the two countries, west of the Mississippi, shall begin on the Gulph of Mexico, at the mouth of the river Sabine, in the sea, continuing north, along the western bank of that river, to the 32d degree of latitude; thence, by a line due north, to the degree of latitude where it strikes the Rio Roxo of Nachitoches, or *Red River;* then following the course of the Rio Roxo westward, to the degree of longitude 100 west from London and 23 from Washington; then, crossing the said Red River, and running thence, by a line due north, to the river Arkansas; thence, following the course of the southern bank of the Arkansas, to its source, in latitude 42 north; and thence, by that parallel of latitude, to the South Sea. The whole being as laid down in Melish's map of the United States, published at Philadelphia, improved to the first of January, 1818. But, if the source of the Arkansas river shall be found to fall north or south of latitude 42, then the line shall run from the said source due south or north, as the case may be, till it meets the said parallel of latitude 42, and thence, along the said parallel, to the South Sea: All the islands in the Sabine, and the said Red and Arkansas rivers, throughout the course thus described, to belong to the United States; but the use of the waters, and the navigation of the Sabine to the sea, and of the said rivers Roxo and Arkansas, throughout the extent of the said boundary, on their respective banks, shall be common to the respective inhabitants of both nations.

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ARTICLE 5.

The inhabitants of the ceded territories shall be secured in the free exercise of their religion, without any restriction; and all

those who may desire to remove to the Spanish dominions, shall be permitted to sell or export their effects, at any time whatever, without being subject, in either case, to duties.

ARTICLE 6.

The inhabitants of the territories which his Catholic Majesty cedes to the United States, by this Treaty, shall be incorporated in the Union of the United States, as soon as may be consistent with the principles of the Federal Constitution, and admitted to the enjoyment of all the privileges, rights, and immunities, of the citizens of the United States.

ARTICLE 8.

[Grants of land prior to Jan. 24, 1818, to be ratified and confirmed; all subsequent grants to be null and void.]

ARTICLE 9.

The two high contracting parties, animated with the most earnest desire of conciliation, and with the object of putting an end to all the differences which have existed between them, and of confirming the good understanding which they wish to be forever maintained between them, reciprocally renounce all claims for damages or injuries which they, themselves, as well as their respective citizens and subjects, may have suffered until the time of signing this Treaty.

The renunciation of the United States will extend to all the injuries mentioned in the Convention of the 11th of August, 1802.

2. To all claims on account of prizes made by French privateers, and condemned by French consuls, within the territory and jurisdiction of Spain.

3. To all claims of indemnities on account of the suspension of the right of deposit at New-Orleans, in 1802.

4. To all claims of citizens of the United States upon the government of Spain, arising from the unlawful seizures at sea, and in the ports and territories of Spain, or the Spanish colonies.

5. To all claims of citizens of the United States upon the Spanish government, statements of which, soliciting the interposition of the government of the United States, have been presented

to the Department of State, or to the Minister of the United States in Spain, since the date of the Convention of 1802, and until the signature of this Treaty.

The renunciation of his Catholic Majesty extends:

1. To all the injuries mentioned in the Convention of the 11th of August, 1802.

2. To the sums which his Catholic Majesty advanced for the return of Captain Pike from the Provincias Internas.

3. To all injuries caused by the expedition of Miranda, that was fitted out and equipped at New-York.

4. To all claims of Spanish subjects upon the government of the United States, arising from unlawful seizures at sea, or within the ports and territorial jurisdiction of the United States.

Finally, to all the claims of subjects of his Catholic Majesty upon the government of the United States, in which the interposition of his Catholic Majesty's government has been solicited, before the date of this Treaty, and since the date of the Convention of 1802, or which may have been made to the Department of Foreign Affairs of his Majesty, or to his Minister in the United States.

And the high contracting parties, respectively, renounce all claim to indemnities for any of the recent events or transactions of their respective commanders and officers in the Floridas.

The United States will cause satisfaction to be made for the injuries, if any, which, by process of law, shall be established to have been suffered by the Spanish officers, and individual Spanish inhabitants, by the later operations of the American army in Florida.[1]

Article 10.

The Convention entered into between the two governments, on the 11th of August, 1802, the ratifications of which were exchanged the 21st December, 1818, is annulled.

Article 11.

The United States, exonerating Spain from all demands in future, on account of the claims of their citizens to which the renun-

[1] The act of March 3, 1823, to carry into effect Art. IX., is in *U. S. Stat. at Large*, III., 768. — Ed.

ciations herein contained extend, and considering them entirely cancelled, undertake to make satisfaction for the same, to an amount not exceeding five millions of dollars. . . .[1]

Article 12.

The Treaty of Limits and Navigation, of 1795, remains confirmed in all, and each one of, its articles, excepting the 2, 3, 4, 21, and the second clause of the 22d article, which, having been altered by this Treaty, or having received their entire execution, are no longer valid.

With respect to the 15th article of the same Treaty of Friendship, Limits, and Navigation, of 1795, in which it is stipulated that the flag shall cover the property, the two high contracting parties agree that this shall be so understood with respect to those powers who recognise this principle; but, if either of the two contracting parties shall be at war with a third party, and the other neutral, the flag of the neutral shall cover the property of enemies whose government acknowledge this principle, and not of others.

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Article 14.

The United States hereby certify that they have not received any compensation from France, for the injuries they suffered from her privateers, consuls, and tribunals, on the coasts and in the ports of Spain, for the satisfaction of which provision is made by this treaty; and they will present an authentic statement of the prizes made, and of their true value, that Spain may avail herself of the same, in such manner as she may deem just and proper.

Article 15.

The United States, to give to his Catholic Majesty a proof of their desire to cement the relations of amity subsisting between the two nations, and to favour the commerce of the subjects of his Catholic Majesty, agree that Spanish vessels, coming laden

[1] A commission under this article was provided for by act of March 3, 1821 (*U. S. Stat. at Large*, III., 637–639). A stock to provide for the payment of claims was created by act of May 24, 1824 (*U. S. Stat. at Large*, IV., 33, 34). — Ed.

only with productions of Spanish growth or manufactures, directly from the ports of Spain, or of her colonies, shall be admitted, for the term of twelve years, to the ports of Pensacola and St. Augustine, in the Floridas, without paying other or higher duties on their cargoes, or of tonnage, than will be paid by the vessels of the United States. During the said term, no other nation shall enjoy the same privileges within the ceded territories. The twelve years shall commence three months after the exchange of the ratifications of this treaty.

* * * * * * * *[1]

Missouri Compromise

1820–21

The Territory of Missouri, originally a part of the Louisiana purchase, was organized by act of June 4, 1812. January 8, Feb. 2, and March 16, 1818, memorials were presented in the House praying for the admission of the Territory as a State. An enabling act was reported April 3, but there was no further action during the session December 18, 1818, a memorial of the Missouri legislature, praying for admission as a State, was presented, and Feb. 13, 1819, the House took up the enabling act of the previous session. An amendment offered by Tallmadge, of New York, restricting the further extension of slavery in the new State, gave rise to much discussion, but was finally agreed to on the 16th, by two votes of 87 to 76 and 82 to 78, and on the 17th the bill passed the House. The Senate, Feb. 27, by votes of 31 to 7 and 22 to 16, struck out the Tallmadge amendment, and on March 2 passed the bill with amendments. The House refused to concur, and the bill was lost. The issue was now joined on the status of slavery in Missouri. A number of northern legislatures passed resolutions endorsing the Tallmadge proposition, and a large number of petitions to the same effect were transmitted to Congress. In the 16th Congress, which met Dec. 6, 1819, the admission of Alabama restored the balance between free and slave States. In the meantime, the people of the District of Maine had held a convention and drafted a State constitution, and on Dec. 8 the memorial of the convention, praying admission as a State, was presented to Congress. A bill for the admission of Maine was reported in the House Dec. 21, and passed Jan. 3, 1820. A bill to the same effect had been reported in the Senate Dec. 22, but on the receipt of the House bill further consideration was postponed. In the Senate the Maine bill was referred to the Committee on the Judiciary, which reported amendments in the form of a "rider" providing for the admission of Missouri, without probibition of slavery. The bill as amended was taken up Jan. 13,

[1] Signed: "John Quincy Adams, Luis de Onis." — Ed.

and discussed until Feb. 16, when, by a vote of 23 to 21, the report of the committee was concurred in. February 3, in the course of the discussion, Senator Thomas of Illinois submitted an amendment prohibiting slavery in the territory acquired from France north of the line of 36° 30′, except Missouri; the amendment was withdrawn on the 7th, however, and offered again on the 16th; on the 17th, by a vote of 34 to 10, it was adopted. On the 18th the Maine bill, as thus amended, passed the Senate.

In the meantime, the House also had been considering the Missouri question. December 8 the Missouri memorials presented in the previous session had been referred to a select committee, which reported an enabling act on the following day. The bill was taken up Jan. 25, and debated until Feb. 18. On the 23d, so much of the Senate amendments as comprised the Missouri enabling act was disagreed to, by a vote of 93 to 72, and the Thomas amendment was rejected by a vote of 159 to 18. On the 28th the House again insisted on its disagreement to the Senate amendments, the votes being 97 to 76 on the Missouri portions, and 160 to 14 on the Thomas clause. The consideration of the Missouri bill was meanwhile continued. On the 26th an amendment to the same effect as the Thomas amendment in the Senate was rejected, and on the 29th an amendment offered by Taylor, of New York, prohibiting slavery in Missouri, was concurred in by a vote of 94 to 86; March 1, by a vote of 91 to 82, the bill passed the House. In the Senate the clause prohibiting slavery was stricken out, and the Thomas amendment inserted. A compromise was effected by a conference committee; the Maine and Missouri bills were passed separately, and slavery was permitted in Missouri, but prohibited in the remainder of the Louisiana purchase north of 36° 30′. The act for the admission of Maine was approved March 3, and the act authorizing Missouri to form a state government was approved March 6.

The constitution under which Missouri applied for admission contained a clause forbidding free negroes to enter the State. The constitution was transmitted to Congress at the beginning of the session, November, 1820. A resolution to admit Missouri as a State was reported in the Senate Nov. 20, taken up Dec. 4, and debated until the 12th, when it was passed. In the House the resolution was laid on the table until Jan. 15, 1821, when it was taken up and debated until Feb. 2, without any agreement being reached; it was then, on motion of Clay, referred to a select committee of thirteen. The report of the committee, on the 10th, recommended amendments similar to those afterwards agreed upon. On the 12th, after agreeing to the report, the third reading was refused by a vote of 80 to 83; the next day a motion to reconsider was carried, 101 to 66, but, by a vote of 82 to 88, the third reading was again refused. On the 22d Clay proposed the election of a joint committee to consider and report on the advisability of admitting Missouri; this was agreed to by a vote of 101 to 55, and on the following day the committee was chosen. The Senate, in the meantime, had rejected several propositions for admission, but agreed to the plan of a joint committee by a vote of 29 to 7. The report of the committee, in the terms of the resolution as later passed, was agreed to by the House Feb. 26, by a vote of 87 to 81; the Senate agreed to the report on the 28th, by a vote of 28 to 14; March 2 the resolution was approved. The condition imposed by the resolution was accepted by the legislature of

Missouri June 26, 1821, and a proclamation of Aug. 10 announced the admission of Missouri as a State.

The extracts following relate chiefly to the question of slavery as involved in the compromises.

REFERENCES. — Accompanying each of the following extracts is an indication of the source from which it is drawn. The act for the admission of Maine is in *U. S. Stat. at Large*, III., 544; the act authorizing Missouri to form a State constitution, *ib.*, III., 545–548. The constitution of 1820 is in Poore's *Federal and State Constitutions*, II., 1104–1117, and *Niles's Register*, XIX., 50–57. The proceedings of Congress may be followed in the *House and Senate Journals*, 16th Cong., 1st and 2d Sess.; full reports of the debates are in the *Annals;* Benton's *Abridgment*, VI., VII.; *Niles's Register*, XVII., XVIII., XIX. The nature and effect of the compromise were much discussed in the debates on the compromise measures of 1850 and the Kansas-Nebraska act of 1854.

No. 73. Tallmadge's Amendment

February 13, 1819

And provided, That the further introduction of slavery or involuntary servitude be prohibited, except for the punishment of crimes, whereof the party shall have been fully [duly] convicted; and that all children born within the said State, after the admission thereof into the Union, shall be free at the age of twenty-five years.

[*Annals*, 15th Cong., 2d Sess., 1170.]

No. 74. Taylor's Amendment

January 26, 1820

The reading of the bill proceeded as far as the fourth section; when

Mr. Taylor, of New York, proposed to amend the bill by incorporating in that section the following provision:

Section 4, line 25, insert the following after the word "States": "And shall ordain and establish, that there shall be neither slavery nor involuntary servitude in the said State, otherwise than in the punishment of crimes, whereof the party shall have been duly con-

victed: *Provided, always*, That any person escaping into the same, from whom labor or service is lawfully claimed in any other State, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid: *And provided, also*, That the said provision shall not be construed to alter the condition or civil rights of any person now held to service or labor in the said Territory."

[*Annals*, 16th Cong., 1st Sess., 947.]

No. 75. Thomas's Amendment (final form)

February 17, 1820

And be it further enacted, That, in all that territory ceded by France to the United States, under the name of Louisiana, which lies north of thirty-six degrees and thirty minutes north latitude, excepting only such part thereof as is included within the limits of the State contemplated by this act, slavery and involuntary servitude, otherwise than in the punishment of crimes whereof the party shall have been duly convicted, shall be and is hereby forever prohibited: *Provided always*, That any person escaping into the same, from whom labor or service is lawfully claimed in any State or Territory of the United States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service, as aforesaid.

[*Annals*, 16th Cong., 1st Sess., 427, 428.]

No. 76. Report of the Conference Committee

March 1, 1820

[*House of Representatives*]

Mr. Holmes . . . made the following report:

1. That they recommend to the Senate to recede from their amendments to the said bill.

2. That they recommend to the two Houses to agree to strike out [of] the fourth section of the bill from the House of Repre-

sentatives, now pending in the Senate, entitled "An act to authorize the people of Missouri to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States," the following proviso in the following words: [here follows the Taylor amendment.]

And that the following provision be added to the bill: [here follows the Thomas amendment.]

[*Annals*, 16th Cong., 1st Sess., 1576, 1577.]

No. 77. Missouri Enabling Act

March 6, 1820

An Act to authorize the people of the Missouri territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states, and to prohibit slavery in certain territories.

Be it enacted . . . , That the inhabitants of that portion of the Missouri territory included within the boundaries hereinafter designated, be, and they are hereby, authorized to form for themselves a constitution and state government, and to assume such name as they shall deem proper; and the said state, when formed, shall be admitted into the Union, upon an equal footing with the original states, in all respects whatsoever.

Sec. 2. *And be it further enacted*, That the said state shall consist of all the territory included within the following boundaries, to wit: Beginning in the middle of the Mississippi river, on the parallel of thirty-six degrees of north latitude; thence west, along that parallel of latitude, to the St. Francois river; thence up, and following the course of that river, in the middle of the main channel thereof, to the parallel of latitude of thirty-six degrees and thirty minutes; thence west, along the same, to a point where the said parallel is intersected by a meridian line passing through the middle of the mouth of the Kansas river, where the same empties into the Missouri river, thence, from the point aforesaid north, along the said meridian line, to the intersection of the parallel of latitude which passes through the rapids of the river Des Moines,

making the said line to correspond with the Indian boundary line, thence east, from the point of intersection last aforesaid, along the said parallel of latitude, to the middle of the channel of the main fork of the said river Des Moines; thence down and along the middle of the main channel of the said river Des Moines, to the mouth of the same, where it empties into the Mississippi river; thence, due east, to the middle of the main channel of the Mississippi river; thence down, and following the course of the Mississippi river, in the middle of the main channel thereof, to the place of beginning: . . .

* * * * * * * *

Sec. 8. *And be it further enacted*, That in all that territory ceded by France to the United States, under the name of Louisiana, which lies north of thirty-six degrees and thirty minutes north latitude, not included within the limits of the state, contemplated by this act, slavery and involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted, shall be, and is hereby, forever prohibited: *Provided always*, That any person escaping into the same, from whom labour or service is lawfully claimed, in any state or territory of the United States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labour or service as aforesaid.

[*U. S. Stat. at Large*, III., 545, 546, 548.]

No. 78. Constitution of Missouri

July 19, 1820

[Art. III.] Sec. 26. The general assembly shall not have power to pass laws —

1. For the emancipation of slaves without the consent of their owners; or without paying them, before such emancipation, a full equivalent for such slaves so emancipated; and,

2. To prevent *bona-fide* immigrants to this State, or actual settlers therein, from bringing from any of the United States, or from any of their Territories, such persons as may there be deemed to

be slaves, so long as any persons of the same description are allowed to be held as slaves by the laws of this State.

They shall have power to pass laws —

1. To prohibit the introduction into this State of any slaves who may have committed any high crime in any other State or Territory;

2. To prohibit the introduction of any slave for the purpose of speculation, or as an article of trade or merchandise;

3. To prohibit the introduction of any slave, or the offspring of any slave, who heretofore may have been, or who hereafter may be, imported from any foreign country into the United States, or any Territory thereof, in contravention of any existing statute of the United States; and,

4. To permit the owners of slaves to emancipate them, saving the right of creditors, where the person so emancipating will give security that the slave so emancipated shall not become a public charge.

It shall be their duty, as soon as may be, to pass such laws as may be necessary —

1. To prevent free negroes end [and] mulattoes from coming to and settling in this State, under any pretext whatsoever; and,

2. To oblige the owners of slaves to treat them with humanity, and to abstain from all injuries to them extending to life or limb.

[Poore, *Federal and State Constitutions* (ed. 1877), II., 1107, 1108.]

No. 79. Resolution for the Admission of Missouri

March 2, 1821

Resolution *providing for the admission of the State of Missouri into the Union, on a certain condition.*

Resolved . . . , That Missouri shall be admitted into this union on an equal footing with the original states, in all respects whatever, upon the fundamental condition, that the fourth clause of the twenty-sixth section of the third article of the constitution submitted on the part of said state to Congress, shall never be construed to authorize the passage of any law, and that no law

shall be passed in conformity thereto, by which any citizen, of either of the states in this Union, shall be excluded from the enjoyment of any of the privileges and immunities to which such citizen is entitled under the constitution of the United States: *Provided*, That the legislature of the said state, by a solemn public act, shall declare the assent of the said state to the said fundamental condition, and shall transmit to the President of the United States, on or before the fourth Monday in November next, an authentic copy of the said act; upon the receipt whereof, the President, by proclamation, shall announce the fact; whereupon, and without any further proceeding on the part of Congress, the admission of the said state into this Union shall be considered as complete.

[*U. S. Stat. at Large*, III., 645.]

No. 80. Monroe's Message enunciating the Monroe Doctrine

December 2, 1823

THE triumph of Napoleon in Spain in 1808 was followed by a succession of revolts in the Spanish colonies in America, and by 1821 all the colonies had established revolutionary governments. In 1823 France, with the sanction of the so-called Holy Alliance, had restored Ferdinand VII. of Spain to his throne; and later in the year another meeting of the allies was suggested to consider the question of aiding Spain to reduce its colonies to submission. In the meantime, in September, 1821, a Russian ukase had asserted the claim of that country to all the Pacific coast of North America north of the 51st parallel, and forbidden foreigners to trade in the region. The claim of Russia was opposed by both Great Britain and the United States. A proposal from Great Britain, in September, 1823, "that the two countries should unite in a declaration against European intervention in the colonies," was, however, declined. In his annual message of Dec. 2, 1823, Monroe, in discussing the relations of the United States with Russia, Spain, and the Spanish-American colonies, stated the policy which afterwards came to be known as the Monroe doctrine. The principal portions of the message dealing with the subject are given in the extracts following.

REFERENCES. — *Text* of the message in *House and Senate Journals*, 18th Cong., 1st Sess.; the extracts here given are from the *Senate Journal*, 11, 21–23. On the origin of the statements in the message, see J. Q. Adams's *Memoirs*, VI.; Madison's *Writings* (ed. 1865), III., 339, 340; Jefferson's *Works* (ed. 1854), VII., 315–317. Correspondence relating to the Russian

treaty of 1824 is in *Amer. State Papers, Foreign Relations*, V., 434–471; the correspondence with Spain, *ib.*, V., 368–428, throws light on the condition of the colonies. The policy stated by Monroe had been frequently enunciated, though less definitely, before 1823; interesting extracts, from 1787 onwards, are collected in *Amer. History Leaflets*, No. 4. The leading discussions of the Monroe doctrine are Gilman's *Monroe*, chap. 7 (with valuable bibliography, Appendix IV.); G. F. Tucker's *Monroe Doctrine;* Wharton's *Intern. Law Digest* (ed. 1887), I., 268–298; Snow's *American Diplomacy*, 237–294.

At the proposal of the Russian imperial government, made through the minister of the Emperor residing here, a full power and instructions have been transmitted to the Minister of the United States at St. Petersburgh, to arrange, by amicable negotiation, the respective rights and interests of the two nations on the northwest coast of this continent. A similar proposal had been made by his Imperial Majesty to the government of Great Britain, which has likewise been acceded to. . . . In the discussions to which this interest has given rise, and in the arrangements by which they may terminate, the occasion has been judged proper for asserting, as a principle in which the rights and interests of the United States are involved, that the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers.

* * * * * * * *

It was stated at the commencement of the last session, that a great effort was then making in Spain and Portugal, to improve the condition of the people of those countries, and that it appeared to be conducted with extraordinary moderation. It need scarcely be remarked, that the result has been, so far, very different from what was then anticipated. Of events in that quarter of the globe, with which we have so much intercourse, and from which we derive our origin, we have always been anxious and interested spectators. The citizens of the United States cherish sentiments the most friendly, in favor of the liberty and happiness of their fellow men on that side of the Atlantic. In the wars of the European powers, in matters relating to themselves, we have never taken any part, nor does it comport with our policy so to do. It is only when our rights are invaded, or seriously menaced, that we resent injuries, or make preparation for our defence. With the movements in this hemisphere, we are, of necessity,

more immediately connected, and by causes which must be obvious to all enlightened and impartial observers. The political system of the allied powers is essentially different, in this respect, from that of America. This difference proceeds from that which exists in their respective governments. And to the defence of our own, which has been achieved by the loss of so much blood and treasure, and matured by the wisdom of their most enlightened citizens, and under which we have enjoyed unexampled felicity, this whole nation is devoted. We owe it, therefore, to candor, and to the amicable relations existing between the United States and those powers, to declare, that we should consider any attempt on their part to extend their system to any portion of this hemisphere, as dangerous to our peace and safety. With the existing colonies or dependencies of any European power, we have not interfered, and shall not interfere. But with the governments who have declared their independence, and maintained it, and whose independence we have, on great consideration, and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling, in any other manner, their destiny, by any European power, in any other light than as the manifestation of an unfriendly disposition towards the United States. . . .

* * * * * * * *

No. 81. The Bank Controversy: Jackson's First Annual Message

December 8, 1829

THE charter of the Bank of the United States did not expire until 1836, three years after the close of the term for which Jackson had been elected; it was probable, however, that the bank would make early application for a renewal of its privileges. Jackson undoubtedly sympathized with those who feared the political and economic power of a great financial monopoly; the controversy involving the branch bank at Portsmouth, N. H., however, was probably the occasion for beginning his attack on the bank, which he did in his first annual message, transmitted to Congress Dec. 8, 1829. In the House this portion of the message was referred to the Committee of Ways and Means, which made an elaborate report April 13, 1830, through McDuffie of South Carolina, sustaining the bank. May 10 resolutions offered by Potter of North

Carolina, against paper money and the bank, and against the renewal of the charter, were, by a vote of 89 to 66, laid on the table. May 26 Wayne of Georgia submitted resolutions calling on the Secretary of the Treasury for a great variety of information about the conduct and business of the bank; on the 29th these were disagreed to. In the Senate the Committee on Finance, through Smith of Maryland, reported, March 29, against any change in the currency.

REFERENCES. — *Text* of the message in *House and Senate Journals*, 21st Cong., 1st Sess.; the extract here given is from the *House Journal*, 27, 28. For the discussions, see *Cong. Debates*, VI. McDuffie's report is printed as *House Rep.* 358; it is also in *Cong. Debates*, VI., part II., appendix, 104–133. Smith's report is *Senate Rep.* 104. Documents connected with the Portsmouth branch controversy are collected in *Niles's Register*, XXXVII., XXXVIII.; Ingham's "Address," in his own defence, is in *ib.*, XLII., 315, 316. The bank controversy as a whole is treated at length in all larger histories of the period, and in biographies of leading statesmen of the time. *Niles's Register*, XXXVII.–XLV., gives invaluable documentary material. Benton's *Abridgment*, X.–XII., gives full reports of debates; the same author's *Thirty Years' View*, I., is also of great value.

The charter of the Bank of the United States expires in 1836, and its stockholders will most probably apply for a renewal of their privileges. In order to avoid the evils resulting from precipitancy in a measure involving such important principles, and such deep pecuniary interests, I feel that I cannot, in justice to the parties interested, too soon present it to the deliberate consideration of the Legislature and the People. Both the constitutionality and the expediency of the law creating this Bank are well questioned by a large portion of our fellow-citizens; and it must be admitted by all, that it has failed in the great end of establishing a uniform and sound currency.

Under these circumstances, if such an institution is deemed essential to the fiscal operations of the Government, I submit to the wisdom of the Legislature whether a national one, founded upon the credit of the Government and its revenues, might not be devised, which would avoid all constitutional difficulties; and, at the same time, secure all the advantages to the Government and country that were expected to result from the present Bank.

No. 82. The Bank Controversy: Jackson's Second Annual Message

December 7, 1830

LITTLE attention was paid by Congress to so much of Jackson's second annual message as related to the Bank of the United States. December 9, in the House, an attempt by Wayne of Georgia to have that portion of the message referred to a select committee, instead of to the Committee of Ways and Means, was unsuccessful, the vote being 67 to 108. February 2, 1831, the Senate, by a vote of 20 to 23, rejected Benton's motion for leave to bring in a joint resolution declaring that the charter ought not to be renewed. The result in each of these cases was a victory for the bank.

REFERENCES. — *Text* of the message in *House and Senate Journals*, 21st Cong., 2d Sess.; the extract here given is from the *Senate Journal*, 30, 31. For the discussions, see *Cong. Debates*, or Benton's *Abridgment*, XI.

The importance of the principles involved in the inquiry, whether it will be proper to recharter the Bank of the United States, requires that I should again call the attention of Congress to the subject. Nothing has occurred to lessen, in any degree, the dangers which many of our citizens apprehend from that institution, as at present organized. In the spirit of improvement and compromise which distinguishes our country and its institutions, it becomes us to inquire, whether it be not possible to secure the advantages afforded by the present bank, through the agency of a Bank of the United States, so modified in its principles and structure as to obviate constitutional and other objections.

It is thought practicable to organize such a bank, with the necessary officers, as a branch of the Treasury Department, based on the public and individual deposites, without power to make loans or purchase property, which shall remit the funds of the Government, and the expense of which may be paid, if thought advisable, by allowing its officers to sell bills of exchange to private individuals at a moderate premium. Not being a corporate body, having no stockholders, debtors, or property, and but few officers, it would not be obnoxious to the constitutional objections which are urged against the present bank; and having no means to operate on the hopes, fears, or interests, of large masses of the community, it would be shorn of the influence which makes that

bank formidable. The States would be strengthened by having in their hands the means of furnishing the local paper currency through their own banks; while the Bank of the United States, though issuing no paper, would check the issues of the State banks by taking their notes in deposite, and for exchange, only so long as they continue to be redeemed with specie. In times of public emergency, the capacities of such an institution might be enlarged by legislative provisions.

These suggestions are made, not so much as a recommendation, as with a view of calling the attention of Congress to the possible modifications of a system which can not continue to exist in its present form without occasional collisions with the local authorities, and perpetual apprehensions and discontent on the part of the States and the people.

No. 83. The Bank Controversy: Jackson's Third Annual Message

December 6, 1831

THE apparent disposition of Jackson, as indicated by his third annual message, to drop the subject of the bank was further emphasized by the annual report of the Secretary of the Treasury, submitted Dec. 7, in which the cause of the bank was advocated at length.

REFERENCES. — *Text* of the message in *House and Senate Journals*, 22d Cong., 1st Sess.; the extract here given is from the *Senate Journal*, 17. For McLane's report, see *House Exec. Doc.* 3.

Entertaining the opinions heretofore expressed in relation to the Bank of the United States as at present organized, I felt it my duty, in my former messages frankly to disclose them, in order that the attention of the legislature and the people should be seasonably directed to that important subject, and that it might be considered and finally disposed of in a manner best calculated to promote the ends of the Constitution and subserve the public interests. Having thus conscientiously discharged a constitutional duty, I deem it proper, on this occasion, without a more particular reference to the views of the subject there expressed, to leave it for the present to the investigation of an enlightened people and their representatives.

No. 84. Jackson's Bank Veto

July 10, 1832

THE application of the Bank of the United States for a renewal of its charter was presented to Congress Jan. 9, 1832. In the Senate the memorial was referred to a select committee. March 13 Dallas of Pennsylvania, for the committee, reported a bill for a recharter of the bank; the bill was read a second time May 22, and debated until June 11, when it passed by a vote of 28 to 20. In the House the petition for a recharter had been referred to the Committee of Ways and Means, which reported Feb. 10, by McDuffie of South Carolina, a bill to renew and modify the charter. On the 23d Clayton of Georgia moved the appointment of a select committee to examine the affairs of the bank. The motion was debated until March 14, when, with an amendment offered by J. Q. Adams, it was agreed to. A majority report, to the effect "that the bank ought not to be rechartered until the debt was all paid and the revenue readjusted," was made by Clayton April 30; minority reports, defending the bank, were presented by McDuffie and Adams May 11 and 14. The Senate bill was not taken up for discussion in the House until June 30; July 3 it was passed with amendments, under suspension of the rules, by a vote of 107 to 86. The Senate concurred in the House amendments, and the bill went to the President, who returned it July 10 without his approval. In the Senate, July 13, the vote on the repassage of the bill stood 22 to 19, less than the required two-thirds; so the bill failed. Only the most important portions of the veto message, which is very long, are here given.

REFERENCES. — *Text* in *Senate Journal*, 22d Cong., 1st Sess., 433–446; the message is also printed as *Senate Doc.* 180, and *House Exec. Doc.* 300. Full reports of the discussions are in the *Cong. Debates*, and Benton's *Abridgment*, XI. The text of the bank bill is in the *Senate Journal*, 451–453. For Clayton's report, see *House Rep.* 460; the document includes the minority reports, evidence, and papers relating to the Portsmouth controversy. Webster's speeches of May 25 and 28, on the bill, are in his *Works* (ed. 1857), III., 391–415; speech of July 11, on the veto, *ib.*, III., 416–447. Clay's speech of July 12, on the veto, is in his *Life and Speeches* (ed. 1844) II., 94–105. Numerous reports and memorials relating to the bank will be found in the House and Senate documents of this session.

. . . I sincerely regret, that, in the act before me, I can perceive none of those modifications of the bank charter which are necessary, in my opinion, to make it compatible with justice, with sound policy, or with the constitution of our country. . . .

Every monopoly, and all exclusive privileges, are granted at the expense of the public, which ought to receive a fair equivalent. The many millions which this act proposes to bestow on the

stockholders of the existing bank, must come directly or indirectly out of the earnings of the American people. It is due to them, therefore, if their Government sell monopolies and exclusive privileges, that they should at least exact for them as much as they are worth in open market. The value of the monopoly in this case may be correctly ascertained. The twenty-eight millions of stock would probably be at an advance of fifty per cent., and command in market at least forty-two millions of dollars, subject to the payment of the present bonus. The present value of the monopoly, therefore, is seventeen millions of dollars, and this the act proposes to sell for three millions, payable in fifteen annual instalments of $200,000 each. . . .

It has been urged as an argument in favor of rechartering the present bank, that the calling in its loans will produce great embarrassment and distress. The time allowed to close its concerns is ample; and if it has been well managed, its pressure will be light, and heavy only in case its management has been bad. If, therefore, it shall produce distress, the fault will be its own; and it would furnish a reason against renewing a power which has been so obviously abused. But will there ever be a time when this reason will be less powerful? To acknowledge its force, is to admit that the bank ought to be perpetual; and, as a consequence, the present stockholders, and those inheriting their rights as successors, be established a privileged order, clothed both with great political power, and enjoying immense pecuniary advantages, from their connection with the Government.

The modifications of the existing charter, proposed by this act, are not such, in my view, as make it consistent with the rights of the States or the liberties of the people. The qualification of the right of the bank to hold real estate, the limitation of its power to establish branches, and the power reserved to Congress to forbid the circulation of small notes, are restrictions comparatively of little value or importance. All the objectionable principles of the existing corporation, and most of its odious features, are retained without alleviation. . . .

Is there no danger to our liberty and independence in a bank, that, in its nature, has so little to bind it to our country? The President of the bank has told us that most of the State banks exist by its forbearance. Should its influence become concentred,

as it may under the operation of such an act as this, in the hands of a self-elected directory, whose interests are identified with those of the foreign stockholder, will there not be cause to tremble for the purity of our elections in peace, and for the independence of our country in war? Their power would be great whenever they might choose to exert it; but if this monopoly were regularly renewed every fifteen or twenty years, on terms proposed by themselves, they might seldom in peace put forth their strength to influence elections, or control the affairs of the nation. But if any private citizen or public functionary should interpose to curtail its powers, or prevent a renewal of its privileges, it cannot be doubted that he would be made to feel its influence.

Should the stock of the bank principally pass into the hands of the subjects of a foreign country, and we should unfortunately become involved in a war with that country, what would be our condition? Of the course which would be pursued by a bank almost wholly owned by the subjects of a foreign power, and managed by those whose interests, if not affections, would run in the same direction, there can be no doubt. All its operations within, would be in aid of the hostile fleets and armies without. Controlling our currency, receiving our public moneys, and holding thousands of our citizens in independance, it would be more formidable and dangerous than the naval and military power of the enemy.

If we must have a bank with private stockholders, every consideration of sound policy, and every impulse of American feeling, admonishes that it should be *purely American*. . . .

It is maintained by the advocates of the bank that its constitutionality in all its features ought to be considered as settled by precedent, and by the decision of the Supreme Court. To this conclusion I cannot assent. Mere precedent is a dangerous source of authority, and should not be regarded as deciding questions of constitutional power, except where the acquiescence of the people and the States can be considered as well settled. So far from this being the case on this subject, an argument against the bank might be based on precedent. One Congress, in 1791, decided in favor of a bank; another, in 1811, decided against it. One Congress, in 1815, decided against a bank; another, in 1816, decided in its favor. Prior to the present Congress, therefore,

the precedents drawn from that source were equal. If we resort to the States, the expressions of legislative, judicial, and executive opinions against the bank, have been, probably, to those in its favor, as four to one. There is nothing in precedent, therefore, which, if its authority were admitted, ought to weigh in favor of the act before me.

If the opinion of the Supreme Court covered the whole ground of this act, it ought not to control the co-ordinate authorities of this Government. The Congress, the Executive, and the Court, must each for itself be guided by its own opinion of the constitution. Each public officer, who takes an oath to support the constitution, swears that he will support it as he understands it, and not as it is understood by others. It is as much the duty of the House of Representatives, of the Senate, and of the President, to decide upon the constitutionality of any bill or resolution which may be presented to them for passage or approval, as it is of the Supreme Judges when it may be brought before them for judicial decision. The opinion of the judges has no more authority over Congress, than the opinion of Congress has over the judges; and on that point, the President is independent of both. The authority of the Supreme Court must not, therefore, be permitted to control the Congress or the Executive when acting in their legislative capacities, but to have only such influence as the force of their reasoning may deserve.

But, in the case relied upon, the Supreme Court have not decided that all the features of this corporation are compatible with the constitution. It is true that the court have said that the law incorporating the bank is a constitutional exercise of power by Congress. But, taking into view the whole opinion of the court, and the reasoning by which they have come to that conclusion, I understand them to have decided that, inasmuch as a bank is an appropriate means for carrying into effect the enumerated powers of the General Government, therefore the law incorporating it is in accordance with that provision of the constitution which declares that Congress shall have power "to make all laws which shall be necessary and proper for carrying those powers into execution." Having satisfied themselves that the word "*necessary*" in the constitution, means "*needful*," "*requisite*," "*essential*," "*conducive to*," and that "a bank" is a convenient

a useful, and essential instrument, in the prosecution of the Government's "fiscal operations," they conclude, that to "use one must be within the discretion of Congress," and that "the act to incorporate the Bank of the United States is a law made in pursuance of the constitution": "but," say they, "*where the law is not prohibited, and is really calculated to effect any of the objects entrusted to the Government, to undertake here to inquire into the degree of its necessity, would be to pass the line which circumscribes the judicial department, and to tread on legislative ground.*"

The principle here affirmed is, that the "degree of its necessity," involving all the details of a banking institution, is a question exclusively for legislative consideration. A bank is constitutional; but it is the province of the Legislature to determine whether this or that particular power, privilege, or exemption, is "necessary and proper" to enable the bank to discharge its duties to the Government; and, from their decision, there is no appeal to the courts of justice. . . .

That a Bank of the United States, competent to all the duties which may be required by the Government, might be so organized as not to infringe on our own delegated powers, or the reserved rights of the States, I do not entertain a doubt. Had the Executive been called upon to furnish the project of such an institution, the duty would have been cheerfully performed. In the absence of such a call, it is obviously proper that he should confine himself to pointing out those prominent features in the act presented, which, in his opinion, make it incompatible with the constitution and sound policy. A general discussion will now take place, eliciting new light, and settling important principles; and a new Congress, elected in the midst of such discussion, and furnishing an equal representation of the people according to the last census, will bear to the Capitol the verdict of public opinion, and, I doubt not, bring this important question to a satisfactory result. . . .

Suspicions are entertained, and charges are made, of gross abuse and violation of its charter. An investigation unwillingly conceded, and so restricted in time as necessarily to make it incomplete and unsatisfactory, discloses enough to excite suspicion and alarm. . . . As the charter had yet four years to run, and as a renewal now was not necessary to the successful prosecution

of its business, it was to have been expected that the bank itself, conscious of its purity, and proud of its character, would have withdrawn its application for the present, and demanded the severest scrutiny into all its transactions. In their declining to do so, there seems to be an additional reason why the functionaries of the Government should proceed with less haste, and more caution, in the renewal of their monopoly.

The bank is professedly established as an agent of the Executive branches of the Government, and its constitutionality is maintained on that ground. Neither upon the propriety of present action, nor upon the provisions of this act, was the Executive consulted. It has had no opportunity to say that it neither needs nor wants an agent clothed with such powers, and favored by such exemptions. There is nothing in its legitimate functions which make it necessary or proper. Whatever interest or influence, whether public or private, has given birth to this act, it cannot be found either in the wishes or necessities of the Executive Department, by which present action is deemed premature, and the powers conferred upon its agent not only unnecessary, but dangerous to the Government and country. . . .

No. 85. South Carolina Ordinance of Nullification

November 24, 1832

THE tariff act of 1828, popularly styled the "tariff of abominations," called out vigorous protests from the legislatures of South Carolina and Georgia. The tariff act of July 14, 1832, while doing away with some of the most objectionable features of the act of 1828, showed no signs of an abandonment of the protective policy. The South Carolina election of 1832, accordingly, turned on the question of calling a convention to nullify the tariff laws. The legislature met in extra session Oct. 22; on the 26th, in accordance with the suggestion of Governor Hamilton in his message, a bill for calling a convention was passed. The convention met Nov. 19. Of the 162 delegates present, 136 favored nullification. November 24, by a vote of 136 to 26, the Ordinance of Nullification was adopted. Addresses to the people of the United States and of South Carolina were also issued. The legislature met in regular session Nov. 27, and promptly passed a series of laws to give effect to the ordinance.

REFERENCES. — *Text* in *Senate Doc.* 30, 22d Cong., 2d Sess., pp. 36–39; the document contains also the report of the committee of 21 to the convention, addresses to the people of South Carolina and of the United States, message of Governor Hamilton to the legislature, inaugural address of Governor Hayne, and the three acts. The proceedings of the convention are in *State Papers on Nullification* (Mass. Gen. Court, Misc. Doc., 1834). Numerous documents are collected in *Niles's Register*, XLIII. Houston's *Critical Study of Nullification in South Carolina* is of prime importance; see especially, on the ordinance, pp. 106–115. The protests of South Carolina and Georgia against the tariff of 1828 are in MacDonald's *Select Documents*, Nos. 44 and 45.

An Ordinance to Nullify certain acts of the Congress of the United States, purporting to be laws laying duties and imposts on the importation of foreign commodities.

Whereas the Congress of the United States, by various acts, purporting to be acts laying duties and imposts on foreign imports, but in reality intended for the protection of domestic manufactures, and the giving of bounties to classes and individuals engaged in particular employments, at the expense and to the injury and oppression of other classes and individuals, and by wholly exempting from taxation certain foreign commodities, such as are not produced or manufactured in the United States, to afford a pretext for imposing higher and excessive duties on articles similar to those intended to be protected, hath exceeded its just powers under the Constitution, which confers on it no authority to afford such protection, and hath violated the true meaning and intent of the Constitution, which provides for equality in imposing the burthens of taxation upon the several States and portions of the confederacy; And whereas the said Congress, exceeding its just power to impose taxes and collect revenue for the purpose of effecting and accomplishing the specific objects and purposes which the Constitution of the United States authorizes it to effect and accomplish, hath raised and collected unnecessary revenue for objects unauthorized by the Constitution:

We, therefore, the people of the State of South Carolina in Convention assembled, do declare and ordain, and it is hereby declared and ordained, that the several acts and parts of acts of the Congress of the United States, purporting to be laws for the imposing of duties and imposts on the importation of foreign commodities, and now having actual operation and effect within the United States,

and, more especially, . . . [the tariff acts of 1828 and 1832] . . . , are unauthorized by the Constitution of the United States, and violate the true meaning and intent thereof, and are null, void, and no law, nor binding upon this State, its officers or citizens; and all promises, contracts, and obligations, made or entered into, or to be made or entered into, with purpose to secure the duties imposed by the said acts, and all judicial proceedings which shall be hereafter had in affirmance thereof, are and shall be held utterly null and void.

And it is further ordained, that it shall not be lawful for any of the constituted authorities, whether of this State or of the United States, to enforce the payment of duties imposed by the said acts within the limits of this State; but it shall be the duty of the Legislature to adopt such measures and pass such acts as may be necessary to give full effect to this ordinance, and to prevent the enforcement and arrest the operation of the said acts and parts of acts of the Congress of the United States within the limits of this State, from and after the 1st day of February next, and the duty of all other constituted authorities, and of all persons residing or being within the limits of this State, and they are hereby required and enjoined, to obey and give effect to this ordinance, and such acts and measures of the Legislature as may be passed or adopted in obedience thereto.

And it is further ordained, that in no case of law or equity, decided in the courts of this State, wherein shall be drawn in question the authority of this ordinance, or the validity of such act or acts of the Legislature as may be passed for the purpose of giving effect thereto, or the validity of the aforesaid acts of Congress, imposing duties, shall any appeal be taken or allowed to the Supreme Court of the United States, nor shall any copy of the record be permitted or allowed for that purpose; and if any such appeal shall be attempted to be taken, the courts of this State shall proceed to execute and enforce their judgments, according to the laws and usages of the State, without reference to such attempted appeal, and the person or persons attempting to take such appeal may be dealt with as for a contempt of the court.

And it is further ordained, that all persons bow [now] holding any office of honor, profit, or trust, civil or military, under this State, (members of the Legislature excepted,) shall, within such

time, and in such manner as the Legislature shall prescribe, take an oath well and truly to obey, execute, and enforce, this ordinance, and such act or acts of the Legislature as may be passed in pursuance thereof, according to the true intent and meaning of the same; and on the neglect or omission of any such person or persons so to do, his or their office or offices shall be forthwith vacated, and shall be filled up as if such person or persons were dead or had resigned; and no person hereafter elected to any office of honor, profit, or trust, civil or military, (members of the Legislature excepted,) shall, until the Legislature shall otherwise provide and direct, enter on the execution of his office, or be in any respect competent to discharge the duties thereof, until he shall, in like manner, have taken a similar oath; and no juror shall be empannelled in any of the courts of this State, in any cause in which shall be in question this ordinance, or any act of the Legislature passed in pursuance thereof, unless he shall first, in addition to the usual oath, have taken an oath that he will well and truly obey, execute, and enforce this ordinance, and such act or acts of the Legislature as may be passed to carry the same into operation and effect, according to the true intent and meaning thereof.

And we, the people of South Carolina, to the end that it may be fully understood by the Gov nment of the United States, and the people of the co-States, that we are determined to maintain this, our ordinance and declaration, at every hazard, do further declare that we will not submit to the application of force, on the part of the Federal Government, to reduce this State to obedience; but that we will consider the passage, by Congress, of any act authorizing the employment of a military or naval force against the State of South Carolina, her constituted authorities or citizens; or any act abolishing or closing the ports of this State, or any of them, or otherwise obstructing the free ingress and egress of vessels to and from the said ports, or any other act on the part of the Federal Government, to coerce the State, shut up her ports, destroy or harrass her commerce, or to enforce the acts hereby declared to be null and void, otherwise than through the civil tribunals of the country, as inconsistent with the longer continuance of South Carolina in the Union: and that the people of this State will thenceforth hold themselves absolved from all further obliga.

tion to maintain or preserve their political connexion with the people of the other States, and will forthwith proceed to organize a separate Government, and do all other acts and things which sovereign and independent States may of right to do.[1]

No. 86. Jackson's Proclamation to the People of South Carolina

December 10, 1832

In anticipation of the action of the South Carolina convention, Jackson issued additional instructions to the collector at Charleston, and made preparations for using the military and naval forces of the United States if necessary. The authorities of South Carolina made similar preparations. Hayne had left the Senate to become governor of the State, his place being taken by Calhoun, who resigned the Vice-Presidency. In his annual message of Dec. 4, 1832, Jackson referred briefly to the state of affairs in South Carolina, and expressed the hope that existing laws would prove sufficient for any exigency. On the 10th he issued the proclamation to the people of South Carolina, extracts from which follow. December 20 Governor Hayne, at the request of the legislature, issued a counter proclamation, in which, among other matters, the interference of the President was resented, and the right of secession affirmed. On the same day general orders, over the signature of the adjutant general of the State, invited the services of volunteers.

References. — *Text* in *Senate Doc.* 30, 22d Cong., 2d Sess., pp. 78–92; the same document contains also the instructions to the collector of customs and the United States district attorney, and the proclamation of Governor Hayne. The resolution of the legislature of South Carolina, in response to the proclamation, is in *Niles's Register*, XLIII., 300.

[After reciting the circumstances under which the Ordinance of Nullification was issued, and the substance of its assertions, the proclamation continues:]

And whereas, the said ordinance prescribes to the people of South Carolina a course of conduct in direct violation of their duty as citizens of the United States, contrary to the laws of their country, subversive of its Constitution, and having for its object the destruction of the Union — that Union, which, coeval with our political existence, led our fathers, without any other ties to unite them than those of patriotism and a common cause, through

[1] The formal indorsement and the names of the signers are omitted. — Ed.

a sanguinary struggle to a glorious independence — that sacred Union, hitherto inviolate, which, perfected by our happy Constitution, has brought us, by the favor of Heaven, to a state of prosperity at home, and high consideration abroad, rarely, if ever, equalled in the history of nations. To preserve this bond of our political existence from destruction, to maintain inviolate this state of national honor and prosperity, and to justify the confidence my fellow citizens have reposed in me, I, ANDREW JACKSON, *President of the United States*, have thought proper to issue this my PROCLAMATION, stating my views of the Constitution and laws applicable to the measures adopted by the Convention of South Carolina, and to the reasons they have put forth to sustain them, declaring the course which duty will require me to pursue, and, appealing to the understanding and patriotism of the people, warn them of the consequences that must inevitably result from an observance of the dictates of the Convention. . . .

The ordinance is founded, not on the indefeasible right of resisting acts which are plainly unconstitutional, and too oppressive to be endured; but on the strange position that any one State may not only declare an act of Congress void, but prohibit its execution — that they may do this consistently with the Constitution — that the true construction of that instrument permits a State to retain its place in the Union, and yet be bound by no other of its laws than those it may choose to consider as constitutional. It is true, they add, that to justify this abrogation of a law, it must be palpably contrary to the Constitution; but it is evident, that, to give the right of resisting laws of that description, coupled with the uncontrolled right to decide what laws deserve that character, is to give the power of resisting all laws. For, as by the theory, there is no appeal, the reasons alleged by the State, good or bad, must prevail. If it should be said that public opinion is a sufficient check against the abuse of this power, it may be asked why it is not deemed a sufficient guard against the passage of an unconstitutional act by Congress? There is, however, a restraint in this last case, which makes the assumed power of a State more indefensible, and which does not exist in the other. There are two appeals from an unconstitutional act passed by Congress — one to the Judiciary, the other to the people and the States. There is no appeal from the State decision in theory, and

he practical illustration shows that the courts are closed against n application to review it, both judges and jurors being sworn to ecide in its favor. But reasoning on this subject is superfluous, vhen our social compact, in express terms, declares that the laws f the United States, its Constitution, and treaties made under it, re the supreme law of the land; and, for greater caution, adds that the judges in every State shall be bound thereby, anything n the Constitution or laws of any State to the contrary notwithtanding." And it may be asserted without fear of refutation, that o Federative Government could exist without a similar provision. Look for a moment to the consequence. If South Carolina conciders the revenue laws unconstitutional, and has a right to prevent heir execution in the port of Charleston, there would be a clear onstitutional objection to their collection in every other port, and o revenue could be collected any where; for all imposts must be qual. It is no answer to repeat, that an unconstitutional law is o law, so long as the question of its legality is to be decided y the State itself; for every law operating injuriously upon any ocal interest will be perhaps thought, and certainly represented, s unconstitutional, and, as has been shown, there is no ppeal. . . .

If the doctrine of a State veto upon the laws of the Union carries vith it internal evidence of its impracticable absurdity, our contitutional history will also afford abundant proof that it would ave been repudiated with indignation had it been proposed to orm a feature in our Government. . . .

I consider, then, the power to annul a law of the United States, ssumed by one State, INCOMPATIBLE WITH THE EXISTENCE OF THE UNION, CONTRADICTED EXPRESSLY BY THE LETTER OF THE CONSTITUTION, UNAUTHORIZED BY ITS SPIRIT, INCONSISTENT WITH EVERY PRINCIPLE ON WHICH IT WAS FOUNDED, AND DESTRUCTIVE OF THE GREAT OBJECT FOR WHICH IT WAS FORMED.

After this general view of the leading principle, we must examne the particular application of it which is made in the ordinance.

The preamble rests its justification on these grounds: It assumes, s a fact, that the obnoxious laws, although they purport to be aws for raising revenue, were in reality intended for the protection f manufactures, which purpose it asserts to be unconstitutional; hat the operation of these laws is unequal; that the amount

raised by them is greater than is required by the wants of the Government; and, finally, that the proceeds are to be applied to objects unauthorized by the Constitution. These are the only causes alleged to justify an open opposition to the laws of the country, and a threat of seceding from the Union, if any attempt should be made to enforce them. The first virtually acknowledges that the law in question was passed under a power expressly given by the Constitution to lay and collect imposts; but its constitutionality is drawn in question from the *motives* of those who passed it. However apparent this purpose may be in the present case, nothing can be more dangerous than to admit the position that an unconstitutional purpose, entertained by the members who assent to a law enacted under a constitutional power, shall make that law void: for how is that purpose to be ascertained? Who is to make the scrutiny? How often may bad purposes be falsely imputed — in how many cases are they concealed by false professions — in how many is no declaration of motive made? Admit this doctrine, and you give to the States an uncontrolled right to decide, and every law may be annulled under this pretext. If, therefore, the absurd and dangerous doctrine should be admitted, that a State may annul an unconstitutional law, or one that it deems such, it will not apply to the present case.

The next objection is, that the laws in question operate unequally. This objection may be made with truth, to every law that has been or can be passed. The wisdom of man never yet contrived a system of taxation that would operate with perfect equality. If the unequal operation of a law makes it unconstitutional, and if all laws of that description may be abrogated by any State for that cause, then indeed is the Federal Constitution unworthy of the slightest effort for its preservation. . . .

The two remaining objections made by the ordinance to these laws, are that the sums intended to be raised by them are greater than are required, and that the proceeds will be unconstitutionally employed.

The Constitution has given, expressly, to Congress the right of raising revenue, and of determining the sum the public exigencies will require. The States have no control over the exercise of this right other than that which results from the power of changing the representatives who abuse it, and thus procure redress. Congress

may, undoubtedly, abuse this discretionary power, but the same may be said of others with which they are vested. Yet the discretion must exist somewhere. The Constitution has given it to the representatives of all the people, checked by the representatives of the States, and by the Executive Power. The South Carolina construction gives it to the Legislature or the Convention of a single State, where neither the people of the different States, nor the States in their separate capacity, nor the Chief Magistrate elected by the people, have any representation. Which is the most discreet disposition of the power? . . .

The ordinance, with the same knowledge of the future that characterizes a former objection, tells you that the proceeds of the tax will be unconstitutionally applied. If this could be ascertained with certainty, the objection would, with more propriety, be reserved for the law so applying the proceeds, but surely can not be urged against the laws levying the duty. . . .

On such expositions and reasonings, the ordinance grounds not only an assertion of the right to annul the laws of which it complains, but to enforce it by a threat of seceding from the Union if any attempt is made to execute them.

This right to secede is deduced from the nature of the Constitution, which, they say, is a compact between sovereign States, who have preserved their whole sovereignty, and, therefore, are subject to no superior; that, because they made the compact, they can break it when, in their opinion, it has been departed from by the other States. . . .

The people of the United States formed the Constitution, acting through the State Legislatures in making the compact, to meet and discuss its provisions, and acting in separate Conventions when they ratified those provisions: but the terms used in its construction, show it to be a government in which the people of all the States collectively are represented. . . .

The Constitution of the United States then forms a *government*, not a league; and whether it be formed by compact between the States, or in any other manner, its character is the same. It is a government in which all the people are represented, which operates directly on the people individually, not upon the States — they retained all the power they did not grant. But each State having expressly parted with so many powers as to constitute, jointly

with the other States, a single nation, cannot, from that period, possess any right to secede, because such secession does not break a league, but destroys the unity of a nation; and any injury to that unity is not only a breach which would result from the contravention of a compact, but it is an offence against the whole Union. To say that any State may at pleasure secede from the Union, is to say that the United States are not a nation, because it would be a solecism to contend that any part of a nation might dissolve its connexion with the other parts, to their injury or ruin, without committing any offence. Secession, like any other revolutionary act, may be morally justified by the extremity of oppression; but to call it a constitutional right, is confounding the meaning of terms; and can only be done through gross error, or to deceive those who are willing to assert a right, but would pause before they made a revolution, or incur the penalties consequent on a failure.

Because the Union was formed by compact, it is said the parties to that compact may, when they feel themselves aggrieved, depart from it: but it is precisely because it is a compact that they cannot. A compact is an agreement or binding obligation. It may by its terms have a sanction or penalty for its breach or it may not. If it contains no sanction, it may be broken with no other consequence than moral guilt: if it have a sanction, then the breach insures the designated or implied penalty. A league between independent nations, generally, has no sanction other than a moral one; or if it should contain a penalty, as there is no common superior, it cannot be enforced. A government, on the contrary, always has a sanction, express or implied; and, in our case, it is both necessarily implied and expressly given. An attempt, by force of arms, to destroy a government, is an offence by whatever means the constitutional compact may have been formed, and such government has the right, by the law of self-defence, to pass acts for punishing the offender, unless that right is modified, restrained, or resumed by the constitutional act. In our system, although it is modified in the case of treason, yet authority is expressly given to pass all laws necessary to carry its powers into effect, and, under this grant, provision has been made for punishing acts which obstruct the due administration of the laws.

. . . No one, fellow citizens, has a higher reverence for the

reserved rights of the States than the magistrate who now addresses you. No one would make greater personal sacrifices, or official exertions, to defend them from violation; but equal care must be taken to prevent, on their part, an improper interference with, or resumption of, the rights they have vested in the nation. The line has not been so distinctly drawn as to avoid doubts in some cases of the exercise of power. Men of the best intentions and soundest views may differ in their construction of some parts of the Constitution; but there are others on which dispassionate reflection can leave no doubt. Of this nature appears to be the assumed right of secession. . . .

These are the alternatives that are presented by the Convention: a repeal of all the acts for raising revenue, leaving the Government without the means of support, or an acquiescence in the dissolution of our Union by the secession of one of its members. When the first was proposed, it was known that it could not be listened to for a moment. It was known, if force was applied to oppose the execution of the laws that it must be repelled by force; that Congress could not, without involving itself in disgrace and the country in ruin, accede to the proposition: and yet if this is not done in a given day, or if any attempt is made to execute the laws, the State is, by the ordinance, declared to be out of the Union. The majority of a Convention assembled for the purpose, have dictated these terms, or rather this rejection of all terms, in the name of the people of South Carolina. It is true that the Governor of the State speaks of the submission of their grievances to a Convention of all the States, which, he says, they "sincerely and anxiously seek and desire." Yet this obvious and constitutional mode of obtaining the sense of the other States on the construction of the federal compact, and amending it, if necessary, has never been attempted by those who have urged the State on to this destructive measure. The State might have proposed the call for a General Convention to the other States; and Congress, if a sufficient number of them concurred, must have called it. But the first magistrate of South Carolina, when he expressed a hope that, "on a review by Congress and the functionaries of the General Government, of the merits of the controversy," such a Convention will be accorded to them, must have known that neither Congress, nor any functionary of the General

Government, has authority to call such a Convention, unless it be demanded by two-thirds of the States. This suggestion, then, is another instance of the reckless inattention to the provisions of the Constitution with which this crisis has been madly hurried on; or of the attempt to persuade the people that a constitutional remedy had been sought and refused. If the Legislature of South Carolina "anxiously desire" a General Convention to consider their complaints, why have they not made application for it in the way the Constitution points out? The assertion that they "earnestly seek it" is completely negatived by the omission.

This, then, is the position in which we stand. A small majority of the citizens of one State in the Union have elected delegates to a State Convention; that Convention has ordained that all the revenue laws of the United States must be repealed, or that they are no longer a member of the Union. The Governor of that State has recommended to the Legislature the raising of an army to carry the secession into effect, and that he may be empowered to give clearances to vessels in the name of the State. No act of violent opposition to the laws has yet been committed, but such a state of things is hourly apprehended; and it is the intent of this instrument to proclaim, not only that the duty imposed on me by the Constitution "to take care that the laws be faithfully executed," shall be performed to the extent of the powers already vested in me by law, or of such others as the wisdom of Congress shall devise and entrust to me for that purpose, but to warn the citizens of South Carolina who have been deluded into an opposition to the laws, of the danger they will incur by obedience to the illegal and disorganizing ordinance of the Convention; to exhort those who have refused to support it to persevere in their determination to uphold the Constitution and laws of their country; and to point out to all the perilous situation into which the good people of that State have been led, and that the course they are urged to pursue is one of ruin and disgrace to the very State whose rights they affect to support. . . .

No. 87. Act for Enforcing the Tariff

March 2, 1833

In his annual message of Dec. 4, 1832, Jackson suggested that "the policy of protection must be ultimately limited to those articles of domestic manufacture which are indispensable to our safety in time of war"; and the annual report of the Secretary of the Treasury recommended a reduction of duties to a revenue basis. December 27 Verplanck of New York reported from the House Committee of Ways and Means a bill to reduce the tariff. January 16, 1833, Jackson sent to Congress his message on nullification, reviewing the progress of events in South Carolina and asking for additional legislation to enforce the revenue laws. On the 21st a bill to enforce the collection of the revenue was reported in the Senate by Wilkins of Pennsylvania, from the Committee on the Judiciary. The tariff bill, sharply antagonized by protectionist members, was meantime making its way through the House. February 12 Clay introduced in the Senate a compromise tariff bill. On the 20th the Senate passed the "force bill" by a vote of 32 to 1, and on the following day took up Clay's bill. On the 25th the House recommitted its tariff bill, by a vote of 95 to 54, with instructions to report the compromise tariff in its place; on the 26th the latter passed the House, the vote being 119 to 85. The same day the Senate laid Clay's bill on the table, and March 1 passed the House bill, by a vote of 29 to 16. The "force bill" passed the House March 1, by a vote of 149 to 47. In the meantime, many State legislatures had passed resolutions against nullification. The South Carolina ordinance was to go into effect Feb. 1, but action was deferred pending congressional settlement of the tariff. The passage of the compromise tariff was regarded as a signal victory by the nullifiers. The convention was summoned to meet March 11; on the 18th it dissolved, after repealing the ordinance of nullification and adopting an ordinance nullifying the "force bill."

References. — *Text* in *U. S. Stat. at Large*, IV., 632–635. For the proceedings, see the *House and Senate Journals*, 22d Cong., 2d Sess.; for the discussions, see the *Cong. Debates*, or Benton's *Abridgment*, XII. *Niles's Register*, XLIII., contains abstracts of debates and numerous documents. The message of Jan. 16 is in the *Journals*. The speeches of Webster and Calhoun on the "force bill" are in the *Cong. Debates*, and also Calhoun's *Works* (ed. 1853), II., 197–309, and Webster's *Works* (ed. 1857), III., 448–505.

An Act further to provide for the collection of duties on imports.

Be it enacted . . . , That whenever, by reason of unlawful obstructions, combinations, or assemblages of persons, it shall become impracticable, in the judgment of the President, to execute the revenue laws, and collect the duties on imports in the ordinary way, in any collection district, it shall and may be lawful for the President to direct that the custom-house

for such district be established and kept in any secure place within some port or harbour of such district, either upon land or on board any vessel; and, in that case, it shall be the duty of the collector to reside at such place, and there to detain all vessels and cargoes arriving within the said district until the duties imposed on said cargoes, by law, be paid in cash, deducting interest according to existing laws; and in such cases it shall be unlawful to take the vessel or cargo from the custody of the proper officer of the customs, unless by process from some Court of the United States; and in case of any attempt otherwise to take such vessel or cargo by any force, or combination, or assemblage of persons too great to be overcome by the officers of the customs, it shall and may be lawful for the President of the United States, or such person or persons as he shall have empowered for that purpose, to employ such part of the land or naval forces, or militia of the United States, as may be deemed necessary for the purpose of preventing the removal of such vessel or cargo, and protecting the officers of the customs in retaining the custody thereof.

Sec. 2. *And be it further enacted*, That the jurisdiction of the circuit courts of the United States shall extend to all cases, in law or equity, arising under the revenue laws of the United States, for which other provisions are not already made by law; and if any person shall receive any injury to his person or property for or on account of any act by him done, under any law of the United States, for the protection of the revenue or the collection of duties on imports, he shall be entitled to maintain suit for damage therefor in the circuit court of the United States in the district wherein the party doing the injury may reside, or shall be found. And all property taken or detained by any officer or other person under authority of any revenue law of the United States, shall be irrepleviable, and shall be deemed to be in the custody of the law, and subject only to the orders and decrees of the courts of the United States having jurisdiction thereof. And if any person shall dispossess or rescue, or attempt to dispossess or rescue, any property so taken or detained as aforesaid, or shall aid or assist therein, such person shall be deemed guilty of a misdemeanour, and shall be liable to such punishment as is provided by the twenty-second section of the act . . . [of April 30, 1790][1]

[1] *U. S. Stat. at Large*, I., 112, 117. — Ed.

. . . , for the wilful obstruction or resistance of officers in the service of process.

[Sections 3 and 4 provide for the transfer to United States circuit courts, and trial there, of cases in State courts under the revenue laws.]

SEC. 5. *And be it further enacted*, That whenever the President of the United States shall be officially informed, by the authorities of any state, or by a judge of any circuit or district court of the United States, in the state, that, within the limits of such state, any law or laws of the United States, or the execution thereof, or of any process from the courts of the United States, is obstructed by the employment of military force, or by any other unlawful means, too great to be overcome by the ordinary course of judicial proceeding, or by the powers vested in the marshal by existing laws, it shall be lawful for him, the President of the United States, forthwith to issue his proclamation, declaring such fact or information, and requiring all such military and other force forthwith to disperse; and if at any time after issuing such proclamation, any such opposition or obstruction shall be made, in the manner or by the means aforesaid, the President shall be, and hereby is, authorized, promptly to employ such means to suppress the same, and to cause the said laws or process to be duly executed, as are authorized and provided in the cases therein mentioned by . . . [certain military acts of February 28, 1795, and March 3, 1807.[1]]

* * * * * * * *

SEC. 7. *And be it further enacted*, That either of the justices of the Supreme Court, or a judge of any district court of the United States, in addition to the authority already conferred by law, shall have power to grant writs of habeas corpus in all cases of a prisoner or prisoners, in jail or confinement, where he or they shall be committed or confined on, or by any authority or law, for any act done, or omitted to be done, in pursuance of a law of the United States, or any order, process, or decree, of any judge or court thereof, any thing in any act of Congress to the contrary notwithstanding. . . .

SEC. 8. *And be it further enacted*, That the several provisions contained in the first and fifth sections of this act, shall be in force until the end of the next session of Congress, and no longer

[1] *U. S. Stat. at Large*, I., 424, 425, and II., 443. — ED

Removal of the Deposits

September, 1833

By the bank charter act the immediate control of the public deposits was vested in the Secretary of the Treasury, with the further provision that, in case of their removal from the bank, the reasons therefor should be laid before Congress. The removal of the deposits seems to have been discussed in administration circles soon after Jackson's second election; reports, however, did not become current until July, 1833. In May the Secretary of the Treasury, McLane, having declined to order the removal, was transferred to the Department of State, and Duane appointed in his place. September 18 Jackson read to the Cabinet an elaborate paper, drafted by Taney, the Attorney-General, setting forth at length his reasons for deciding upon the removal of the deposits after Oct. 1. Although Duane was opposed to the bank, he "refused to give the order and refused to resign"; Sept. 23 he was dismissed, and Taney became Secretary of the Treasury. In the meantime Amos Kendall, a member of the "Kitchen Cabinet," had been sent to visit a number of eastern cities and arrange with State banks to receive the public deposits. The first orders for removal were issued by Taney Sept. 26, and designated the Girard Bank of Philadelphia as a place of deposit. In October the Maine Bank of Portland and the Franklin Bank of Cincinnati were similarly designated.

References. — *Text* of the paper read to the Cabinet in *Niles's Register*, XLV., 73–77; it is also in the *Cong. Globe*, 1833–35, I., pp. 59–62; of the correspondence relative to the removal of the deposits, in *Senate Doc.* 2, 23d Cong., 1st Sess., pp. 32–36. The removal of the deposits was the principal subject of debate in the session of Congress which met Dec. 2, 1833. Numerous documents are collected in *Niles's Register*, XLV., XLVI.

No. 88. Jackson's Paper read to the Cabinet

September 18, 1833

Having carefully and anxiously considered all the facts and arguments, which have been submitted to him, relative to a removal of the public deposites from the bank of the United States, the president deems it his duty, to communicate in this manner to his cabinet the final conclusions of his own mind, and the reasons on which they are founded, in order to put them in durable form, and to prevent misconceptions.

[The paper then reviews the controversy with the bank, and particularly the efforts to obtain a renewal of the charter, and continues:]

The power of the secretary of the treasury over the deposites is *unqualified*. The provision that he shall report his reasons to congress, is no limitation. Had it not been inserted, he would have been responsible to congress, had he made a removal for any other than good reasons, and his responsibility now ceases, upon the rendition of sufficient ones to congress. The only object of the provision, is to make his reasons accessible to congress, and enable that body the more readily to judge of their soundness and purity, and thereupon to make such further provision by law as the legislative power may think proper in relation to the deposite of the public money. Those reasons may be very diversified. It was asserted by the secretary of the treasury without contradiction, as early as 1817, that he had power "to control the proceedings" of the bank of the United States at any moment, "by changing the deposites to the state banks," should it pursue an illiberal course towards those institutions; that "the secretary of the treasury will always be disposed to support the credit of the state banks, and will invariably direct transfers from the deposites of the public money in aid of their legitimate exertions to maintain their credit," and he asserted a right to employ the state banks when the bank of the United States should refuse to receive on deposite the notes of such state banks as the public interest required should be received in payment of the public dues. In several instances he did transfer the public deposites to state banks, in the immediate vicinity of branches, for reasons connected only with the safety of those banks, the public convenience and the interests of the treasury.

If it was lawful for Mr. Crawford, the secretary of the treasury at that time, to act on these principles, it will be difficult to discover any sound reason against the application of similar principles in still stronger cases. And it is a matter of surprise that a power which, in the infancy of the bank, was freely asserted as one of the ordinary and familiar duties of the secretary of the treasury, should now be gravely questioned, and attempts made to excite and alarm the public mind as if some new and unheardof power was about to be usurped by the executive branch of the government.

It is but a little more than two and a half years to the termination of the charter of the present bank. It is considered as the decision of the country that it shall then cease to exist, and no man, the president believes, has reasonable ground for expectation that any other bank of the United States will be created by Congress. . . . It is obvious that any new system which may be substituted in the place of the bank of the United States, could not be suddenly carried into effect on the termination of its existence without serious inconvenience to the government and the people. Its vast amount of notes are then to be redeemed and withdrawn from circulation, and its immense debt collected. These operations must be gradual, otherwise much suffering and distress will be brought upon the community. It ought to be not a work of months only, but of years, and the president thinks it cannot, with due attention to the interests of the people, be longer postponed. It is safer to begin it too soon than to delay it too long.

It is for the wisdom of Congress to decide upon the best substitute to be adopted in the place of the bank of the United States; and the president would have felt himself relieved from a heavy and painful responsibility if in the charter of the bank, congress had reserved to itself the power of directing at its pleasure, the public money to be elsewhere deposited, and had not devolved that power exclusively on one of the executive departments. . . . But as the president presumes that the charter to the bank is to be considered as a contract on the part of the government, it is not now in the power of congress to disregard its stipulations; and by the terms of that contract the public money is to be deposited in the bank, during the continuance of its charter, unless the secretary of the treasury shall otherwise direct. . . .

The responsibility is thus thrown upon the executive branch of the government, of deciding how long before the expiration of the charter, the public interests will require the deposites to be placed elsewhere. . . . and it being the duty of one of the executive departments to decide in the first instance, subject to the future action of the legislative power, whether the public deposites shall remain in the bank of the United States until the end of its existence, or be withdrawn some time before, the president has felt himself bound to examine the question carefully and deliberately in order to make up his judgment on the subject: and in his

opinion the near approach of the termination of the charter, and the public considerations heretofore mentioned, are of themselves amply sufficient to justify the removal of the deposites without reference to the conduct of the bank, or their safety in its keeping. . . .

[An examination of the charges against the bank follows.]

It has been alleged by some as an objection to the removal of the deposites, that the bank has the power, and in that event will have the disposition, to destroy the state banks employed by the government, and bring distress upon the country. It has been the fortune of the president to encounter dangers which were represented as equally alarming, and he has seen them vanish before resolution and energy. . . . The president verily believes the bank has not the power to produce the calamities its friends threaten. The funds of the government will not be annihilated by being transferred. They will immediately be issued for the benefit of trade, and if the bank of the United States curtails its loans, the state banks, strengthened by the public deposites, will extend theirs. What comes in through one bank, will go out through others, and the equilibrium will be preserved. Should the bank, for the mere purpose of producing distress, press its debtors more heavily than some of them can bear, the consequences will recoil upon itself, and in the attempts to embarrass the country, it will only bring loss and ruin upon the holders of its own stock. But if the president believed the bank possessed all the power which has been attributed to it, his determination would only be rendered the more inflexible. If, indeed, this corporation now holds in its hands the happiness and prosperity of the American people, it is high time to take the alarm. If the despotism be already upon us, and our only safety is in the mercy of the despot, recent developments in relation to his designs and the means he employs, show how necessary it is to shake it off. The struggle can never come with less distress to the people, or under more favorable auspices than at the present moment.

All doubts as to the willingness of state banks to undertake the service of the government, to the same extent, and on the same terms, as it is now performed by the banks [bank] of the United States, is put to rest by the report of the agent recently employed to collect information; and from that willingness, their own safety in the operation may be confidently inferred. . . .

From all these considerations the president thinks that the state banks ought immediately to be employed in the collection and disbursement of the public revenue, and the funds now in the bank of the United States drawn out with all convenient despatch. . . .

* * * * * * * *

In conclusion the president must be permitted to remark that he looks upon the pending question as of higher consideration than the mere transfer of a sum of money from one bank to another. Its decision may affect the character of our government for ages to come. . . . Viewing it as a question of transcendant importance, both in the principles and consequences it involves, the president could not, in justice to the responsibility which he owes to the country, refrain from pressing upon the secretary of the treasury, his view of the considerations which impel to immediate action. Upon him has been devolved by the constitution and the suffrages of the American people, the duty of superintending the operation of the executive departments of the government, and seeing that the laws are faithfully executed. In the performance of this high trust, it is his undoubted right to express to those whom the laws and his own choice have made his associates in the administration of the government, his opinion of their duties under circumstances as they arise. It is this right which he now exercises. Far be it from him to expect or require, that any member of the cabinet should at his request, order or dictation, do any act which he believes unlawful, or in his conscience condemns. From them and from his fellow citizens in general, he desires only that aid and support, which their reason approves and their conscience sanctions.

In the remarks he has made on this all important question, he trusts the secretary of the treasury will see only the frank and respectful declarations of the opinions which the president has formed on a measure of great national interest, deeply affecting the character and usefulness of his administration; and not a spirit of dictation, which the president would be as careful to avoid, as ready to resist. Happy will he be, if the facts now disclosed produce uniformity of opinion and unity of action among the members of the administration.

The president again repeats that he begs his cabinet to con-

sider the proposed measure as his own, in the support of which he shall require no one of them to make a sacrifice of opinion or principle. Its responsibility has been assumed, after the most mature deliberation and reflection, as necessary to preserve the morals of the people, the freedom of the press and the purity of the elective franchise, without which all will unite in saying that the blood and treasure expended by our forefathers in the establishment of our happy system of government will have been vain and fruitless. Under these convictions, he feels that a measure so important to the American people cannot be commenced too soon; and he therefore names the first day of October next, as a period proper for the change of the deposites, or sooner, provided the necessary arrangements with the state banks can be made.

No. 89. Taney's Instructions to the Collector at Philadelphia

September 26, 1833

TREASURY DEPARTMENT,
September 26, 1833.

SIR: Believing that the public interest requires that the Bank of the United States should cease to be the depository of the money of the United States, I have determined to use the State banks as places of deposites; and have selected for that purpose, in the city of Philadelphia, the Girard Bank.

You will, therefore, present the enclosed draft of a contract to that bank; and, upon the execution of the contract, you will forward it to this department. You will ask the aid of the District Attorney of the United States, who will see that the contract is executed in due form under the corporate seal. The contract being executed, you will then deposite all of the public money which may come to your hands after the thirtieth day of this present month of September, in the bank above mentioned, until the further order of this department. You will also deposite in the said bank, for collection, all the bonds which may hereafter be taken for the payment of duties.

You will also call on the Bank of the United States at Philadel

phia, and receive from it all bonds hereafter given to the United States, which are payable on or after the first day of October next, and deposite them for collection in the aforesaid State bank. I send you, herewith, an order on the Bank of the United States for that purpose.

When the contract shall have been executed by the State bank, you will forward the enclosed letters to the collectors, at Bridgetown, Burlington, Great Egg harbor, and Little Egg harbor, who have heretofore deposited the money received by them in the Bank of the United States.

You will continue to deposite as usual, in the Bank of the United States, until the thirtieth of this present month of September, inclusive.

You will keep a copy of the contract executed by the bank, and, from time to time, advise this department of any thing you may deem material to the public interest, connected with the change of the deposites.

Your obedient servant,

R. B. TANEY,
Secretary of the Treasury.

To JAMES N. BARKER, ESQ.,
Collector, Philadelphia.

No. 90. Taney to the Girard Bank

September 26, 1833

TREASURY DEPARTMENT,
September 26, 1833.

SIR: The Girard Bank has been selected by this department as the depository of the public money collected in Philadelphia and its vicinity; and the collector at Philadelphia will hand you the form of a contract proposed to be executed, with a copy of his instructions from this department.

In selecting your institution as one of the fiscal agents of the Government, I not only rely on its solidity and established character, as affording a sufficient guaranty for the safety of the public money intrusted to its keeping; but I confide also in its disposi-

tion to adopt the most liberal course, which circumstances will admit, towards other moneyed institutions generally, and particularly to those in the city of Philadelphia.

The deposites of public money will enable you to afford increased facilities to commerce, and to extend your accomodation to individuals; and as the duties which are payable to the Government arise from the business and enterprise of the merchants engaged in foreign trade, it is but reasonable that they should be preferred in the additional accommodation which the public deposites will enable your institution to give, whenever it can be done without injustice to the claims of other classes of the community.

I am, very respectfully,
Your obedient servant,
R. B. TANEY,
Secretary of Treasury.

To the PRESIDENT OF THE GIRARD BANK,
Philadelphia.

No. 91. Taney to the Bank of the United States

September 26, 1833

TREASURY DEPARTMENT,
September 26, 1833.

SIR: You will deliver to the collector at Philadelphia all bonds to the United States, payable on or after the first of October next, which may be in your possession on the receipt of this order.

I am, very respectfully,
Your obedient servant,
R. B. TANEY,
Secretary of the Treasury.

NICHOLAS BIDDLE, ESQ.,
President of the Bank of the United States, Philadelphia.

No. 92. Contract between the Girard Bank and the United States

September 28, 1833

1st. The said bank agrees to receive, and enter to the credit of the Treasurer of the United States, all sums of money offered to be deposited on account of the United States, whether offered in gold or silver coin, in notes of the Bank of the United States or branches, in notes of any bank which are convertible into coin in its immediate vicinity, or in notes of any bank which it is, for the time being, in the habit of receiving.

2. If the deposite in said bank shall exceed one-half of its capital stock actually paid in, it is agreed that collateral security, satisfactory to the Secretary of the Treasury, shall be given for its safe keeping and faithful disbursement: Provided, that, if the said Secretary shall at any time deem it necessary, the bank agrees to give collateral security when the deposite shall not equal one-half the capital.

3. The said bank agrees to make weekly returns of its entire condition to the Secretary of the Treasury, and to the Treasurer of the United States of the state of his account, and to submit its books and transactions to a critical examination by the Secretary, or any agent duly authorized by him, whenever he shall require it.

This examination may extend to all the books and accounts, to the cash on hand, and to all the acts and concerns of the bank, except the current accounts of individuals; or as far as is admissible without a violation of the bank charter.

4. The said bank agrees to pay, out of the deposite on hand, all warrants or drafts which may be drawn upon it by the Treasurer of the United States, and to transfer any portion of that deposite to any other bank or banks employed by the Government within the United States, whenever the Secretary of the Treasury may require it, without charge to the Government for transportation or difference of exchange, commission, or any thing else whatever; but the Secretary of the Treasury shall give a reasonable notice of the time when such transfer will be required.

5. The said bank agrees to render to the Government, when-

ever required by the proper authority, all or any portion of the services now performed by the Bank of the United States, or which might be lawfully required of it in the vicinity of said contracting bank.

6. If the Secretary of the Treasury shall think proper to employ an agent or agents to examine and report upon the accounts and condition of the banks in the service of the Government, or any of them, the said bank agrees to pay an equitable proportion of his or their expenses and compensation, according to such apportionment as may be made by the said Secretary.

7. Whenever required by the Secretary of the Treasury, the said bank agrees to furnish, with all convenient despatch, bills of exchange on London, payable at such sight as may be required, at the usual market price for the time being, without commission or advance for the profit of said bank, or any charge whatsoever beyond the actual cost; the payment of said bills to be guaranteed by said bank.

8. It is agreed that the Secretary of the Treasury may discharge the said bank from the service of the Government whenever, in his opinion, the public interest may require it. In witness whereof, the said The Girard Bank in the city of Philadelphia, has caused to be affixed its corporate seal, attested by the signatures of its president and cashier, on the day and year first above written.

[L.S.] JAS. SCHOTT, *President.*
WM. D. LEWIS, *Cashier.*

No. 93. Constitution of the American Anti-Slavery Society

December 4, 1833

A CALL for a convention to meet Dec. 4, 1833, at Philadelphia, to form an American Anti-Slavery Society, was issued Oct. 29 over the signatures of Arthur Tappan, Joshua Leavitt, and Elizur Wright, Jr., officers of the New York City Anti-Slavery Society. About sixty delegates assembled at the appointed time and adopted a constitution, together with a "Declaration of Sentiments," the original draft of the latter being drawn by William Lloyd Garrison.

REFERENCES. — *Text* in a pamphlet entitled *Platform of the American Anti-Slavery Society and its Auxiliaries* (New York, 1855), pp. 3, 4. The fullest account of the convention is in *William Lloyd Garrison: Story of his Life told by his Children*, I., 392–415, where is also a copy of the Declaration. The Declaration is also in the pamphlet above cited. For Whittier's account, see *Atlantic Monthly*, XXXIII., 166–172 (February, 1874).

Whereas the Most High God "hath made of one blood all nations of men to dwell on all the face of the earth," and hath commanded them to love their neighbors as themselves; and whereas, our National Existence is based upon this principle, as recognized in the Declaration of Independence, "that all mankind are created equal, and that they are endowed by their Creator with certain inalienable rights, among which are life, liberty, and the pursuit of happiness"; and whereas, after the lapse of nearly sixty years, since the faith and honor of the American people were pledged to this avowal, before Almighty God and the World, nearly one-sixth part of the nation are held in bondage by their fellow-citizens; and whereas, Slavery is contrary to the principles of natural justice, of our republican form of government, and of the Christian religion, and is destructive of the prosperity of the country, while it is endangering the peace, union, and liberties of the States; and whereas, we believe it the duty and interest of the masters immediately to emancipate their slaves, and that no scheme of expatriation, either voluntary or by compulsion, can remove this great and increasing evil; and whereas, we believe that it is practicable, by appeals to the consciences, hearts, and interests of the people, to awaken a public sentiment throughout the nation that will be opposed to the continuance of Slavery in any part of the Republic, and by effecting the speedy abolition of Slavery, prevent a general convulsion; and whereas, we believe we owe it to the oppressed, to our fellow-citizens who hold slaves, to our whole country, to posterity, and to God, to do all that is lawfully in our power to bring about the extinction of Slavery, we do hereby agree, with a prayerful reliance on the Divine aid, to form ourselves into a society, to be governed by the following Constitution: —

ARTICLE I. — This Society shall be called the AMERICAN ANTI-SLAVERY SOCIETY.

ARTICLE II. — The objects of this Society are the entire abolition of Slavery in the United States. While it admits that each

State, in which Slavery exists, has, by the Constitution of the United States, the exclusive right to *legislate* in regard to its abolition in said State, it shall aim to convince all our fellow-citizens, by arguments addressed to their understandings and consciences, that Slaveholding is a heinous crime in the sight of God, and that the duty, safety, and best interests of all concerned, require its *immediate abandonment*, without expatriation. The Society will also endeavor, in a constitutional way, to influence Congress to put an end to the domestic Slave trade, and to abolish Slavery in all those portions of our common country which come under its control, especially in the District of Columbia, — and likewise to prevent the extension of it to any State that may be hereafter admitted to the Union.

Article III. — This Society shall aim to elevate the character and condition of the people of color, by encouraging their intellectual, moral, and religious improvement, and by removing public prejudice, that thus they may, according to their intellectual and moral worth, share an equality with the whites, of civil and religious privileges; but this Society will never, in any way, countenance the oppressed in vindicating their rights by resorting to physical force.

Article IV. — Any person who consents to the principles of this Constitution, who contributes to the funds of this Society, and is not a Slaveholder, may be a member of this Society, and shall be entitled to vote at the meetings.

[The remaining six articles are purely formal.]

No. 94. Act to Regulate the Deposits

June 23, 1836

In his annual message of Dec. 7, 1835, Jackson announced the extinguishment of the national debt, and renewed the recommendation contained in his annual message of Dec. 2, 1834, that suitable regulation of the public deposits be made. In the Senate, Dec. 29, Calhoun brought in a bill for that purpose, together with a joint resolution "proposing an amendment to the Constitution, providing for a distribution of the surplus revenues among the several States and Territories, until the year 1843." The joint resolution was laid on the table March 4. The bill to regulate the deposits was taken up April

21, and debated at intervals until June 17, when, with an amendment providing for the distribution of the surplus revenue among the States, it passed by a vote of 39 to 6. The House passed the bill on the 21st, by a vote of 155 to 38, with an amendment making the distributed revenue a loan to the States, instead of a gift. In each house attempts to divide the measure were unsuccessful. The Senate concurred in the House amendment, and June 23 the act was approved. A bill for regulating the deposits had been introduced in the House March 21, but repeated efforts to secure its consideration failed A supplementary act of July 4 authorized the Secretary of the Treasury to make transfers of the public money from the banks of one State to those of another, whenever necessary "to prevent large and inconvenient accumulations in particular places, or in order to produce a due equality and just proportion." Quarterly payments under the act were made in January, April, and July, 1837, to the amount of $28,000,000; after that there was no longer a surplus, and the distribution ceased. The money thus loaned to the States was never recalled.

REFERENCES. — *Text* in *U. S. Stat. at Large*, V., 52–56. For the proceedings, see the *House and Senate Journals*, 24th Cong., 1st Sess.; for the discussions, see *Cong. Debates*, or *Cong. Globe*, or Benton's *Abridgment*, XII. Webster's speech of March 17, on the deposit banks, is in his *Works* (ed. 1857), IV., 235–237; speech of May 31, on the surplus revenue, *ib.*, IV., 252–264. For Calhoun's speech of May 28, on the regulation of the deposits, see his *Works* (ed. 1857), II., 534–569. The treatment of the surplus and public deposits was discussed in the annual report of the Secretary of the Treasury, Dec. 6, 1836. Jackson, in his annual message of Dec. 5, criticised the deposit act at length. See further Bourne's *History of the Surplus Revenue of* 1837.

An Act to regulate the deposites of the public money.

Be it enacted . . . , That it shall be the duty of the Secretary of the Treasury to select as soon as may be practicable and employ as the depositories of the money of the United States, such of the banks incorporated by the several States, by Congress for the District of Columbia, or by the Legislative Councils of the respective Territories for those Territories, as may be located at, adjacent or convenient to the points or places at which the revenues may be collected, or disbursed, and in those States, Territories or Districts in which there are no banks, and within which the public collections or disbursements require a depository, the said Secretary may make arrangements with a bank or banks, in some other State, Territory or District, to establish an agency, or agencies, in the States, Territories or Districts so destitute of banks, as banks of deposite; and to receive through such agencies such deposites of the public money, as may be directed to be made at the points

designated, and to make such disbursements as the public service may require at those points; the duties and liabilities of every bank thus establishing any such agency to be the same in respect to its agency, as are the duties and liabilities of deposit banks generally under the provisions of this act: *Provided*, That at least one such bank shall be selected in each State and Territory, if any can be found in each State and Territory willing to be employed as depositories of the public money, upon the terms and conditions hereinafter prescribed, and continue to conform thereto; and that the Secretary of the Treasury shall not suffer to remain in any deposite bank, an amount of the public moneys more than equal to three-fourths of the amount of its capital stock actually paid in, for a longer time than may be necessary to enable him to make the transfers required by the twelfth section of this act; and that the banks so selected, shall be, in his opinion, safe depositories of the public money, and shall be willing to undertake to do and perform the several duties and services, and to conform to the several conditions prescribed by this act.

* * * * * * * *

SEC. 4. *And be it further enacted*, That the said banks, before they shall be employed as the depositories of the public money, shall agree to receive the same, upon the following terms and conditions, to wit:

First. Each bank shall furnish to the Secretary of the Treasury, from time to time, as often as he may require, not exceeding once a week, statements setting forth its condition and business . . . And the said banks shall furnish to the Secretary of the Treasury, and to the Treasurer of the United States, a weekly statement of the condition of his account upon their books. And the Secretary of the Treasury shall have the right, by himself, or an agent appointed for that purpose, to inspect such general accounts in the books of the bank, as shall relate to the said statements: *Provided*, That this shall not be construed to imply a right of inspecting the account of any private individual or individuals with the bank.

Secondly. To credit as specie, all sums deposited therein to the credit of the Treasurer of the United States, and to pay all checks, warrants, or drafts, drawn on such deposites, in specie if required by the holder thereof.

Thirdly. To give, whenever required by the Secretary of the

Treasury, the necessary facilities for transferring the public funds from place to place, within the United States, and the Territories thereof, and for distributing the same in payment of the public creditors, without charging commissions or claiming allowance on account of difference of exchange.

Fourthly. To render to the Government of the United States all the duties and services heretofore required by law to be performed by the late Bank of the United States and its several branches or offices.

SEC. 5. *And be it further enacted*, That no bank shall be selected or continued as a place of deposite of the public money which shall not redeem its notes and bills on demand in specie. . . .

* * * * * * * *

SEC. 13. *And be it further enacted*, That the money which shall be in the Treasury of the United States, on . . . [January 1, 1837], . . . , reserving the sum of five millions of dollars, shall be deposited with such of the several States, in proportion to their respective representation in the Senate and House of Representatives of the United States, as shall, by law, authorize their Treasurers, or other competent authorities to receive the same on the terms hereinafter specified; . . . which certificates shall express the usual and legal obligations, and pledge the faith of the State, for the safe keeping and repayment thereof, and shall pledge the faith of the States receiving the same, to pay the said moneys, and every part thereof, from time to time, whenever the same shall be required, by the Secretary of the Treasury, for the purpose of defraying any wants of the public treasury, beyond the amount of the five millions aforesaid: . . . *provided* . . . , That when said money, or any part thereof, shall be wanted by the said Secretary, to meet appropriations by law, the same shall be called for, in rateable proportions, within one year, as nearly as conveniently may be, from the different States, with which the same is deposited, and shall not be called for, in sums exceeding ten thousand dollars, from any one State, in any one month, without previous notice of thirty days, for every additional sum of twenty thousand dollars, which may at any time be required.

SEC. 14. *And be it further enacted*, That the said deposites shall be made with the said States in the following proportions, and at

the following times, to wit: one quarter part on . . . [January 1, 1837], . . . or as soon thereafter as may be; one quarter part on the first day of April, one quarter part on the first day of July, and one quarter part on the first day of October, all in the same year.

* * * * * * * *

No. 95. Specie Circular

July 11, 1836

One effect of the speculative fever which began early in 1835 was an enormous increase in the sales of the public lands. By law, payments for lands could be made only in gold and silver, or in notes of specie paying banks; but a large part of the payments was in fact made in State bank notes, which in the West had largely driven specie out of circulation. The United States thus found that the public domain was being disposed of for a currency of doubtful or more than doubtful value. The subject of the coinage had been before Congress since 1834, and Jackson had declared himself in favor of gold and silver as the "true constitutional currency." April 23, 1836, Benton moved that thereafter "nothing but gold and silver coin ought to be received in payment for public lands." The motion was tabled, and the session ended without action. July 11, by direction of the President, the so-called specie circular was issued. An inquiry into the effect of the circular was moved by Benton Jan. 12, 1837, and a bill "designating and limiting the funds receivable for the revenues of the United States" passed the Senate Feb. 10, by a vote of 41 to 5, and the House March 1, without a division, but was vetoed by the President. By a joint resolution approved May 21, 1838, it was declared unlawful for the Secretary of the Treasury "to make or to continue in force, any general order, which shall create any difference between the different branches of revenue, as to the money or medium of payment, in which debts or dues, accruing to the United States, may be paid."

References. — *Text* in *Senate Doc.* 2, 24th Cong., 2d Sess., p. 96. The reasons for the circular were discussed by Jackson in his annual message of Dec. 5, 1836. Wright's report of May 16, 1838, is *Senate Doc.* 445, 25th Cong., 2d Sess. Webster's speech of April 23, 1836, on Benton's motion, is in his *Works* (ed. 1857), IV., 238–246; for his speech of Dec. 21 on the circular, *ib.*, IV., 265–291. See also Benton's *Thirty Years' View*, I., chaps. 146, 156. Jackson's statement of reasons for not signing the bill of 1837, with an accompanying opinion of the Attorney-General, is in *Niles's Register* LII., 26, 27.

Circular to Receivers of Public Money, and to the Deposite Banks

TREASURY DEPARTMENT, *July* 11, 1836

IN consequence of complaints which have been made of frauds, speculations, and monopolies, in the purchase of the public lands, and the aid which is said to be given to effect these objects by excessive bank credits, and dangerous if not partial facilities through bank drafts and bank deposites, and the general evil influence likely to result to the public interests, and especially the safety of the great amount of money in the Treasury, and the sound condition of the currency of the country, from the further exchange of the national domain in this manner, the President of the United States has given directions, and you are hereby instructed, after the 15th day of August next, to receive in payment of the public lands nothing except what is directed by the existing laws, viz: gold and silver, and in the proper cases, Virginia land scrip; provided that till the 15th of December next, the same indulgences heretofore extended as to the kind of money received, may be continued for any quantity of land not exceeding 320 acres to each purchaser who is an actual settler or bona fide resident in the State where the sales are made.

In order to ensure the faithful execution of these instructions, all receivers are strictly prohibited from accepting for land sold, any draft, certificate, or other evidence of money, or deposite, though for specie, unless signed by the Treasurer of the United States, in conformity to the act of April 24, 1820. . . .

The principal objects of the President in adopting this measure being to repress alleged frauds, and to withhold any countenance or facilities in the power of the Government from the monopoly of the public lands in the hands of speculators and capitalists, to the injury of the actual settlers in the new States, and of emigrants in search of new homes, as well as to discourage the ruinous extension of bank issues, and bank credits, by which those results are generally supposed to be promoted, your utmost vigilance is required, and relied on, to carry this order into complete execution.

LEVI WOODBURY,
Secretary of the Treasury.

No. 96. Treaty with Great Britain

August 9, 1842

THE determination of the northeastern boundary of the United States, first defined by the treaty of 1783, had been the subject of frequent diplomatic correspondence and international agreements. So much of the boundary as had to do with the St. Croix River and its source had been fixed by commissioners under the treaty of 1794, but the claims to the "highlands" were still unsettled. In 1831 the award of the king of the Netherlands, under the convention of 1827, had been rejected by both Great Britain and the United States. "In 1838–9 the territory between New Brunswick and Maine, claimed by both parties, became the scene of a small border war. Maine raised an armed posse, erected forts along the line which she claimed as the true one, and the legislature placed $800,000 at the governor's disposal for the defence of the State; an act of Congress, March 3, 1839, authorized the President to resist any attempt of Great Britain to enforce exclusive jurisdiction over the disputed territory, and armed conflict was only averted by the mediation of Gen. Scott, who arranged a truce and a joint occupation by both parties" (Johnston). In addition to the question of boundary, differences had also arisen between the two countries over the attempted participation of Americans in the Canadian rebellion of 1837, and in regard to the suppression of the slave trade. Early in 1842 Lord Ashburton was sent to the United States as special envoy, and Aug. 9 the treaty usually known by his name was concluded. October 13 ratifications were exchanged at London, and Nov. 10 the treaty was proclaimed. By act of March 3, 1843, provision was made for carrying the treaty into effect.

REFERENCES. — *Text* in *U. S. Stat. at Large*, VIII., 572–577. The diplomatic correspondence, including that with Maine and New Hampshire, is in *House Exec. Doc.* 2, 27th Cong., 3d Sess.; also *Cong. Globe*, 4–21. The treaty was adversely criticised in Congress in 1846, in the discussions over the treaty of Washington; Webster's speech of April 6 and 7 gives a full account of the negotiations. The speech is in the *Cong. Globe*, 29th Cong., 1st Sess., and also Webster's *Works* (ed. 1857), V., 78–147. Calhoun's speech on the treaty is in his *Works* (ed. 1854), IV., 212–237. Contrasted English views may be seen in the *Quarterly Rev.*, LXXI., 560–595, and *Westm. Rev.*, XXXIX., 83–107. See also Wharton's *Intern. Law Digest* (ed. 1887), II., 175–183; *Senate Doc.*, 500, 27th Cong., 2d Sess. The act of March 3, 1843, to carry the treaty into effect is in *U. S. Stat. at Large*, V., 623.

* * * * * * * *

ARTICLE I.

It is hereby agreed and declared that the line of boundary shall be as follows: Beginning at the monument at the source of

the river St. Croix as designated and agreed to by the commissioners under the fifth article of the treaty of 1794, between the Governments of the United States and Great Britain; thence, north, following the exploring line run and marked by the surveyors of the two Governments in the years 1817 and 1818, under the fifth article of the treaty of Ghent, to its intersection with the river St. John, and to the middle of the channel thereof; thence, up the middle of the main channel of the said river St. John, to the mouth of the river St. Francis; thence, up the middle of the channel of the said river St. Francis, and of the lakes through which it flows, to the outlet of the Lake Pohenagamook; thence, southwesterly, in a straight line, to a point on the northwest branch of the river St. John, which point shall be ten miles distant from the main branch of the St. John, in a straight line, and in the nearest direction—but if the said point shall be found to be less than seven miles from the nearest point of the summit or crest of the highlands that divide those rivers which empty themselves into the river St. Lawrence from those which fall into the river St. John, then the said point shall be made to recede down the said northwest branch of the river St. John, to a point seven miles in a straight line from the said summit or crest; thence, in a straight line, in a course about south, eight degrees west, to the point where the parallel of latitude of 46° 25′ north intersects the southwest branch of the St. John's; thence, southerly, by the said branch, to the source thereof in the highlands at the Metjarmette portage; thence, down along the said highlands which divide the waters which empty themselves into the river St. Lawrence from those which fall into the Atlantic ocean, to the head of Hall's stream; thence, down the middle of said stream, till the line thus run intersects the old line of boundary surveyed and marked by Valentine and Collins, previously to the year 1774, as the 45th degree of north latitude, and which has been known and understood to be the line of actual division between the States of New York and Vermont on one side, and the British province of Canada on the other; and from said point of intersection, west, along the said dividing line, as heretofore known and understood, to the Iroquois or St. Lawrence river.

Article II.

It is moreover agreed, that, from the place where the joint commissioners terminated their labors under the sixth article of the treaty of Ghent, to wit: at a point in the Neebish channel, near Muddy Lake, the line shall run into and along the ship channel between St. Joseph and St. Tammany islands, to the division of the channel at or near the head of St. Joseph's island; thence, turning eastwardly and northwardly around the lower end of St. George's or Sugar island, and following the middle of the channel which divides St. George's from St. Joseph's island; thence up the east Neebish channel, nearest to St. George's island, through the middle of Lake George; thence, west of Jonas' island, into St. Mary's river, to a point in the middle of that river, about one mile above St. George's or Sugar island, so as to appropriate and assign the said island to the United States; thence, adopting the line traced on the maps by the commissioners, through the river St. Mary and Lake Superior, to a point north of Ile Royale, in said lake, one hundred yards to the north and east of Ile Chapeau, which last-mentioned island lies near the northeastern point of Ile Royale, where the line marked by the commissioners terminates; and from the last-mentioned point, southwesterly, through the middle of the sound between Ile Royale and the northwestern main land, to the mouth of Pigeon river, and up the said river, to and through the north and south Fowl Lakes, to the lakes of the height of land between Lake Superior and the Lake of the Woods; thence, along the water communication to Lake Saisaginaga, and through that lake; thence, to and through Cypress Lake, Lac du Bois Blanc, Lac la Croix, Little Vermilion Lake, and Lake Namecan, and through the several smaller lakes, straits, or streams, connecting the lakes here mentioned, to that point in Lac la Pluie, or Rainy Lake, at the Chaudière Falls, from which the commissioners traced the line to the most northwestern point of the Lake of the Woods; thence, along the said line, to the said most northwestern point, being in latitude 49° 23′ 55″ north, and in longitude 95° 14′ 38″ west from the observatory at Greenwich; thence, according to existing treaties, due south to its intersection with the 49th parallel of

north latitude, and along that parallel to the Rocky mountains. It being understood that all the water communications and all the usual portages along the line from Lake Superior to the Lake of the Woods, and also Grand portage, from the shore of Lake Superior to the Pigeon river, as now actually used, shall be free and open to the use of the citizens and subjects of both countries.

Article III.

In order to promote the interests and encourage the industry of all the inhabitants of the countries watered by the river St. John and its tributaries, whether living within the State of Maine or the province of New Brunswick, it is agreed that, where, by the provisions of the present treaty, the river St. John is declared to be the line of boundary, the navigation of the said river shall be free and open to both parties, and shall in no way be obstructed by either; that all the produce of the forest, in logs, lumber, timber, boards, staves, or shingles, or of agriculture, not being manufactured, grown on any of those parts of the State of Maine watered by the river St. John, or by its tributaries, of which fact reasonable evidence shall, if required, be produced, shall have free access into and through the said river and its said tributaries, having their source within the State of Maine, to and from the seaport at the mouth of the said river St. John's, and to and round the falls of the said river, either by boats, rafts, or other conveyance; that when within the province of New Brunswick, the said produce shall be dealt with as if it were the produce of the said province; that, in like manner, the inhabitants of the territory of the upper St. John, determined by this treaty to belong to Her Britannic Majesty, shall have free access to and through the river, for their produce, in those parts where the said river runs wholly through the State of Maine: *Provided, always*, That this agreement shall give no right to either party to interfere with any regulations not inconsistent with the terms of this treaty which the Governments, respectively, of Maine or of New Brunswick may make respecting the navigation of the said river, where both banks thereof shall belong to the same party.

Article IV.

All grants of land heretofore made by either party, within the limits of the territory which by this treaty falls within the dominions of the other party, shall be held valid, ratified, and confirmed to the persons in possession under such grants, to the same extent as if such territory had by this treaty fallen within the dominions of the party by whom such grants were made; and all equitable possessory claims, arising from a possession and improvement, of any lot or parcel of land, by the person actually in possession, or by those under whom such person claims, for more than six years before the date of this treaty, shall, in like manner, be deemed valid, and be confirmed and quieted by a release to the person entitled thereto, of the title to such lot or parcel of land, so described as best to include the improvements made thereon; and in all other respects the two contracting parties agree to deal upon the most liberal principles of equity with the settlers actually dwelling upon the territory falling to them, respectively, which has heretofore been in dispute between them.

Article V.

Whereas, in the course of the controversy respecting the disputed territory on the Northeastern boundary, some moneys have been received by the authorities of Her Britannic Majesty's province of New Brunswick, with the intention of preventing depredations on the forests of the said territory, which moneys were to be carried to a fund called the "disputed territory fund," the proceeds whereof, it was agreed, should be hereafter paid over to the parties interested, in the proportions to be determined by a final settlement of boundaries: It is hereby agreed, that a correct account of all receipts and payments on the said fund shall be delivered to the Government of the United States, within six months after the ratification of this treaty; and the proportion of the amount due thereon to the States of Maine and Massachusetts, and any bonds or securities appertaining thereto, shall be paid and delivered over to the Government of the United States; and the Government of the United States agrees to receive for the use of, and pay over to, the States of Maine and Massachusetts, their respective por-

tions of said fund; and further to pay and satisfy said States, respectively, for all claims for expenses incurred by them in protecting the said heretofore disputed territory, and making a survey thereof, in 1838; the Government of the United States agreeing, with the States of Maine and Massachusetts, to pay them the further sum of three hundred thousand dollars, in equal moieties, on account of their assent to the line of boundary described in this treaty, and in consideration of the conditions and equivalents received therefor, from the Government of Her Britannic Majesty.

[Art. VI. provides for the appointment of two commissioners to mark the boundary between the St. Croix and the St. Lawrence.]

Article VII.

It is further agreed, that the channels in the river St. Lawrence, on both sides of the Long Sault islands, and of Barnhart island; the channels in the river Detroit, on both sides of the island Bois Blanc, and between that island and both the American and Canadian shores; and all the several channels and passages between the various islands lying near the junction of the river St. Clair with the lake of that name, shall be equally free and open to the ships, vessels, and boats of both parties.

Article VIII.

The parties mutually stipulate that each shall prepare, equip, and maintain in service, on the coast of Africa, a sufficient and adequate squadron, or naval force of vessels, of suitable numbers and descriptions, to carry in all not less than eighty guns, to enforce, separately and respectively, the laws, rights, and obligations, of each of the two countries, for the suppression of the slave trade; the said squadrons to be independent of each other; but the two Governments stipulating, nevertheless, to give such orders to the officers commanding their respective forces as shall enable them most effectually to act in concert and co-operation, upon mutual consultation, as exigencies may arise, for the attainment of the true object of this article; copies of all such orders to be communicated by each Government to the other, respectively.

Article IX.

Whereas, notwithstanding all efforts which may be made on the coast of Africa for suppressing the slave trade, the facilities for carrying on that traffic, and avoiding the vigilance of cruisers, by the fraudulent use of flags and other means, are so great, and the temptations for pursuing it, while a market can be found for slaves, so strong, as that the desired result may be long delayed, unless all markets be shut against the purchase of African negroes; the parties to this treaty agree that they will unite in all becoming representations and remonstrances, with any and all Powers within whose dominions such markets are allowed to exist; and that they will urge upon all such Powers the propriety and duty of closing such markets effectually, at once and forever.

Article X.

It is agreed that the United States and Her Britannic Majesty shall, upon mutual requisitions by them, or their ministers, officers, or authorities respectively made, deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall seek an asylum, or shall be found, within the territories of the other: provided that this shall only be done upon such evidence of criminality as according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had there been committed: and the respective judges and other magistrates of the two Governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates, respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper Executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such appre-

hension and delivery shall be borne and defrayed by the party who makes the requisition, and receives the fugitive.

Article XI.

The eighth article of this treaty shall be in force for five years from the date of the exchange of the ratifications, and afterwards until one or the other party shall signify a wish to terminate it. The tenth article shall continue in force until one or the other of the parties shall signify its wish to terminate it, and no longer.

* * * * * * * *[1]

No. 97. Joint Resolution for the Annexation of Texas

March 1, 1845

In 1821 the United States of Mexico, until then a part of the Spanish possessions in America, became independent. The provinces of Coahuila and Texas were united as a State, and in 1827 formed a constitution. In 1835 the State declared its independence of Mexico, and in 1836 proclaimed itself the Republic of Texas. The independence of Texas was acknowledged in 1837 by the United States, Great Britain, France, and Belgium, but not by Mexico; and in 1838 a treaty for marking the boundary between Texas and the United States was concluded at Washington. As early as 1821 attempts had been made by Americans from the southern States to gain a foothold in Texas; but propositions by the United States in 1827 and 1829 to purchase Texas were not accepted, and in 1830 "orders were issued to prevent any further emigration from the United States." From 1843 onward annexation became a prominent question, advocated chiefly in the South. In 1844, however, both Van Buren and Clay, respectively the leading Democratic and Whig candidates for the presidency, declared against it, and a treaty for annexation, concluded April 12, 1844, was rejected by the Senate. The election of Polk was regarded as a victory for the annexation policy. December 12, 1844, Ingersoll of Pennsylvania, chairman of the House Committee on Foreign Affairs, reported a joint resolution for annexation, which passed the House Jan. 25, by a vote of 120 to 98. February 4, in the Senate, Archer of Virginia, chairman of the Committee on Foreign Relations, to which had been referred the resolution of the House, together with several similar propositions originating in the Senate, made a report recommending the rejection of the House resolution. The resolution was, however, taken

[1] Signed: "Danl. Webster, Ashburton." — Ed.

up by the Senate Feb. 13, and considered daily until the 27th, when it passed in an amended form, without a division, the vote on the third reading being 27 to 25. On the 28th, by a vote of 134 to 77, the House concurred in the Senate amendments, and March 1 the resolution was approved. The terms proposed were agreed to by the Congress of Texas June 18, and by a convention at Austin July 4. A State constitution was ratified Oct. 13, by popular vote, and by joint resolution of Dec. 29 Texas was admitted as a State. The area acquired by the annexation was 371,063 square miles.

REFERENCES. — *Text* in *U. S. Stat. at Large*, V., 797, 798. For the proceedings of Congress, see the *House and Senate Journals*, 28th Cong., 2d Sess.; for the debates, see the *Cong. Globe*, or Benton's *Abridgment*, XV. For the diplomatic correspondence, etc., see *Senate Doc.* 1, 13 *and* 30, 28th Cong., 2d Sess., and *Senate Doc.* 1, 29th Cong., 1st Sess. Archer's report is *Senate Doc.* 79, 28th Cong., 2d Sess.

Joint Resolution for annexing Texas to the United States.

Resolved . . . , That Congress doth consent that the territory properly included within, and rightfully belonging to the Republic of Texas, may be erected into a new State, to be called the State of Texas, with a republican form of government, to be adopted by the people of said republic, by deputies in convention assembled, with the consent of the existing government, in order that the same may be admitted as one of the States of this Union.

2. *And be it further resolved*, That the foregoing consent of Congress is given upon the following conditions, and with the following guarantees, to wit: *First*, Said State to be formed, subject to the adjustment by this government of all questions of boundary that may arise with other governments; and the constitution thereof, with the proper evidence of its adoption by the people of said Republic of Texas, shall be transmitted to the President of the United States, to be laid before Congress for its final action, on or before the first day of January, one thousand eight hundred and forty-six. *Second*, Said State, when admitted into the Union, after ceding to the United States, all public edifices, fortifications, barracks, ports and harbors, navy and navy-yards, docks, magazines, arms, armaments, and all other property and means pertaining to the public defence belonging to said Republic of Texas, shall retain all the public funds, debts, taxes, and dues of every kind, which may belong to or be due and owing said republic; and shall also retain all the vacant and unappropriated lands lying within its limits, to

be applied to the payment of the debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct; but in no event are said debts and liabilities to become a charge upon the Government of the United States. *Third.* New States, of convenient size, not exceeding four in number, in addition to said State of Texas, and having sufficient population, may hereafter, by the consent of said State, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the federal constitution. And such States as may be formed out of that portion of said territory lying south of thirty-six degrees thirty minutes north latitude, commonly known as the Missouri compromise line, shall be admitted into the Union with or without slavery, as the people of each State asking admission may desire. And in such State or States as shall be formed out of said territory north of said Missouri compromise line, slavery, or involuntary servitude, (except for crime,) shall be prohibited.

3. *And be it further resolved,* That if the President of the United States shall in his judgment and discretion deem it most advisable, instead of proceeding to submit the foregoing resolution to the Republic of Texas, as an overture on the part of the United States for admission, to negotiate with that Republic; then,

Be it resolved, That a State, to be formed out of the present Republic of Texas, with suitable extent and boundaries, and with two representatives in Congress, until the next apportionment of representation, shall be admitted into the Union, by virtue of this act, on an equal footing with the existing States, as soon as the terms and conditions of such admission, and the cession of the remaining Texian territory to the United States shall be agreed upon by the Governments of Texas and the United States: And that the sum of one hundred thousand dollars be, and the same is hereby, appropriated to defray the expenses of missions and negotiations, to agree upon the terms of said admission and cession, either by treaty to be submitted to the Senate, or by articles to be submitted to the two houses of Congress, as the President may direct.

No. 98. Act for the Prosecution of the Mexican War

May 13, 1846

A BILL authorizing the President to accept the services of volunteers in certain cases had been introduced in the House early in the session of 1845–46, but no further action in reference to it had been taken. On the receipt of Polk's war message of May 11 the bill was at once taken up, a new first section and preamble substituted, and, with further amendments and a changed title, the bill passed the same day, by a vote of 174 to 14. In the Senate, the following day, a motion to strike out the preamble was lost, 18 to 28, and the bill, with a slight amendment, was passed, the vote being 40 to 2. On the 13th the House concurred in the Senate amendment, the act was approved, and a proclamation by the President was issued.

REFERENCES. — *Text* in *U. S. Stat. at Large*, IX., 9, 10. The brief proceedings and debates may be followed in the *Journals* and *Cong. Globe*, 29th Cong., 1st Sess., or Benton's *Abridgment*, XV. The political causes and aspects of the Mexican war, and its significance in connection with the slavery controversy, are discussed at length in general histories of the period and in biographies of contemporary public men. See also Webster's *Works* (ed. 1857), V., 253–261, 271–301; Calhoun's *Works* (ed. 1854), IV., 303–327, 396–424.

An Act providing for the Prosecution of the existing War between the United States and the Republic of Mexico.

WHEREAS, by the act of the Republic of Mexico, a state of war exists between that Government and the United States:

Be it enacted . . . , That, for the purpose of enabling the government of the United States to prosecute said war to a speedy and successful termination, the President be, and he is hereby, authorized to employ the militia, naval, and military forces of the United States, and to call for and accept the services of any number of volunteers, not exceeding fifty thousand, who may offer their services, either as cavalry, artillery, infantry, or riflemen, to serve twelve months after they shall have arrived at the place of rendezvous, or to the end of the war, unless sooner discharged, according to the time for which they shall have been mustered into service; and that the sum of ten millions of dollars, out of any moneys in the treasury, or to come into the treasury, not otherwise appropriated, be, and the same is hereby, appropriated for the purpose of carrying the provisions of this act into effect.

* * * * * * * *

SEC. 8. *And be it further enacted,* That the President of the United States be, and he is hereby, authorized forthwith to complete all the public armed vessels now authorized by law, and to purchase or charter, arm, equip, and man, such merchant vessels and steam-boats as, upon examination, may be found fit, or easily converted into armed vessels fit for the public service, and in such number as he may deem necessary for the protection of the seaboard, lake coast, and the general defence of the country.

* * * * * * * *

No. 99. Treaty with Great Britain

June 15, 1846

So much of the northern boundary of the United States as lay between the Lake of the Woods and the Rocky Mountains had been fixed by the Ashburton treaty of 1842; west of the mountains, however, the boundary was still undetermined. By virtue of the discovery of the Mississippi, France had claimed all the region west of that river as far as the Pacific; and this claim, of doubtful value at best, had passed to the United States upon the purchase of Louisiana in 1803. The region known as Oregon was also claimed by the United States, on the ground of Gray's discovery of the Columbia River in 1791. Oregon was also claimed by Great Britain; but by a convention of Oct. 20, 1818, the two countries agreed to a joint occupancy of the country for ten years, without prejudice to the rights of either party. By the treaty of 1819 between the United States and Spain, the latter accepted the 42d parallel as the northern limit of its possessions on the Pacific coast; while by treaties of 1824 with the United States, and of 1825 with Great Britain, the southern limit of the Russian possessions was fixed at 54° 40′. The "Oregon country," therefore, was the region between 42° and 54° 40′, and west of the Rocky Mountains. The convention of 1818 was continued indefinitely Aug. 6, 1827, but made terminable by either party after Oct. 20, 1828, on twelve months' notice. In the presidential campaign of 1844 the Democratic platform demanded "the re-occupation of Oregon, and the re-annexation of Texas, at the earliest practicable period," the intention being, of course, to use Oregon as a political offset to Texas. A bill to organize a territorial government for Oregon, with the line of 54° 40′ as the northern limit, passed the House Feb. 3, 1845, but the Senate refused to consider it because slavery was to be prohibited in the proposed territory. A joint resolution of April 27, 1846, authorized the President, at his discretion, to give the required notice of withdrawal from the agreement of 1827 with Great Britain. The matter in dispute was finally settled by the treaty of June 15, 1846, although, owing to

the disagreement of the commissioners under the treaty, a portion of the water boundary remained undetermined until 1871.

REFERENCES. — *Text* in *U. S. Stat. at Large*, IX., 869–870. The message of the President transmitting the treaty and correspondence, together with the proceedings of the Senate, are in *Senate Doc.* 489, 29th Cong., 1st Sess., and *Cong. Globe*, Appendix, 1168–1178; see also *Senate Doc.* 1, pp. 138–192, and *Senate Doc.* 117.

* * * * * * * *

ARTICLE I.

From the point on the forty-ninth parallel of north latitude, where the boundary laid down in existing treaties and conventions between the United States and Great Britain terminates, the line of boundary between the territories of the United States and those of her Britannic Majesty shall be continued westward along the said forty-ninth parallel of north latitude to the middle of the channel which separates the continent from Vancouver's Island, and thence southerly through the middle of the said channel, and of Fuca's Straits, to the Pacific Ocean: *Provided, however*, That the navigation of the whole of the said channel and straits, south of the forty-ninth parallel of north latitude, remain free and open to both parties.

ARTICLE II.

From the point at which the forty-ninth parallel of north latitude shall be found to intersect the great northern branch of the Columbia River, the navigation of the said branch shall be free and open to the Hudson's Bay Company, and to all British subjects trading with the same, to the point where the said branch meets the main stream of the Columbia, and thence down the said main stream to the ocean, with free access into and through the said river or rivers, it being understood that all the usual portages along the line thus described shall, in like manner, be free and open. In navigating the said river or rivers, British subjects, with their goods and produce, shall be treated on the same footing as citizens of the United States; it being, however, always understood that nothing in this article shall be construed as preventing, or intended to prevent, the government of the United States from making any regulations respecting the navigation of the said river or rivers not inconsistent with the present treaty.

ARTICLE III.

In the future appropriation of the territory south of the forty-ninth parallel of north latitude, as provided in the first article of this treaty, the possessory rights of the Hudson's Bay Company, and of all British subjects who may be already in the occupation of land or other property lawfully acquired within the said territory, shall be respected.

ARTICLE IV.

The farms, lands, and other property of every description, belonging to the Puget's Sound Agricultural Company, on the north side of the Columbia River, shall be confirmed to the said company. In case, however, the situation of those farms and lands should be considered by the United States to be of public and political importance, and the United States government should signify a desire to obtain possession of the whole, or of any part thereof, the property so required shall be transferred to the said government, at a proper valuation, to be agreed upon between the parties.

* * * * * * * * [1]

No. 100. Independent Treasury Act

August 6, 1846

THE passage of the act of July 4, 1840, "to provide for the collection, safe keeping, transfer, and disbursement of the public revenue," seemed to mark the final success of the so-called independent treasury plan, which had been several times urged by the President, and twice rejected by the House in the twenty-fifth Congress. The success of the Whigs, however, in the election of 1840, was followed, Aug. 13, 1841, by the repeal of the act; while the veto of two successive bank bills by President Tyler, in the same year, led to the immediate resignation of the members of the Cabinet, with the exception of Webster, and to a formal repudiation of Tyler by the Whigs. From 1841 to 1846 the custody of the public funds devolved upon the Treasury Department without special regulation by law. December 19, 1845, a bill embodying the general features of the independent treasury act of 1840 was reported in the House. The bill was taken up March 30, and passed April 2 by a vote of 123

[1] Signed: "James Buchanan, Richard Pakenham." — ED.

to 67. It was not reported in the Senate until June 8, and was not further considered until July 29; Aug. 1 the bill passed the Senate, the vote being 28 to 25. The amendments of the Senate were agreed to by the House Aug. 5, and on the 6th the act was approved.

REFERENCES. — *Text* in *U. S. Stat. at Large*, IX., 59–66. For the proceedings, see the *House and Senate Journals*, 29th Cong., 1st Sess.; for the debates, see the *Cong. Globe*, or Benton's *Abridgment*, XV. The act of 1840 is in *U. S. Stat. at Large*, V., 385–392. On the treatment of the public money after 1841, see *House Exec. Doc.* 123. 27th Cong., 2d Sess. Webster's speech of Aug. 1, 1846, is in his *Works* (ed. 1857), V., 244–252. For Clay's speeches on the various sub-treasury plans, see his *Life and Speeches* (ed. 1844), II., 279–303, 310–349, 384–405, 432–436; for his speech on Tyler's bank vetoes, *ib.*, II., 485–507. See also Kinley's *Independent Treasury*, chap. 2.

An Act to provide for the better Organization of the Treasury, and for the Collection, Safe-Keeping, Transfer, and Disbursement of the public Revenue.

* * * * * * * *

Be it enacted . . . , That the rooms prepared and provided in the new treasury building at the seat of government for the use of the treasurer of the United States, his assistants, and clerks, and occupied by them, and also the fireproof vaults and safes erected in said rooms for the keeping of the public moneys in the possession and under the immediate control of said treasurer, and such other apartments as are provided for in this act as places of deposit of the public money, are hereby constituted and declared to be the treasury of the United States. And all moneys paid into the same shall be subject to the draft of the treasurer, drawn agreeably to appropriations made by law.

[Sections 2–4 provide that the mint at Philadelphia, the branch mint at New Orleans, and the places provided for at New York, Boston, Charleston, and St. Louis, under the act of July 4, 1840, for the use of receivers-general of public money, shall be places of deposit.]

SEC. 5. *And be it further enacted*, That the President shall nominate, and by and with the advice and consent of the Senate appoint, four officers to be denominated "assistant treasurers of the United States," which said officers shall hold their respective offices for the term of four years, unless sooner removed therefrom; one of which shall be located at the city of New York . . . ; one . . . at the city of Boston . . . ; one . . . at the city of Charleston . . . ; and one other at St. Louis . . .

SEC. 6. *And be it further enacted*, That the treasurer of the United States, the treasurer of the mint of the United States, the treasurers, and those acting as such, of the various branch mints, all collectors of the customs, all surveyors of the customs acting also as collectors, all assistant treasurers, all receivers of public moneys at the several land offices, all postmasters, and all public officers of whatsoever character, be, and they are hereby, required to keep safely, without loaning, using, depositing in banks, or exchanging for other funds than as allowed by this act, all the public money collected by them, or otherwise at any time placed in their possession and custody, till the same is ordered, by the proper department or officer of the government, to be transferred or paid out; and when such orders for transfer or payment are received, faithfully and promptly to make the same as directed, and to do and perform all other duties as fiscal agents of the government which may be imposed by this or any other acts of Congress, or by any regulation of the treasury department made in conformity to law; and also to do and perform all acts and duties required by law, or by direction of any of the Executive departments of the government, as agents for paying pensions, or for making any other disbursements which either of the heads of these departments may be required by law to make, and which are of a character to be made by the depositaries hereby constituted consistently with the other official duties imposed upon them.

* * * * * * * *

SEC. 9. *And be it further enacted*, That all collectors and receivers of public money, of every character and description, within the District of Columbia, shall, as frequently as they may be directed by the Secretary of the Treasury, or the Postmaster-General so to do, pay over to the treasurer of the United States, at the treasury, all public moneys collected by them, or in their hands; that all such collectors and receivers of public moneys within the cities of Philadelphia and New Orleans shall, upon the same direction, pay over to the treasurers of the mints in their respective cities, at the said mints, all public moneys collected by them, or in their hands; and that all such collectors and receivers of public moneys within the cities of New York, Boston, Charleston, and St. Louis, shall, upon the same direction, pay over to the assistant treasurers in their respective cities, at their offices, re-

spectively, all the public moneys collected by them, or in their hands, to be safely kept by the said respective depositaries until otherwise disposed of according to law; and it shall be the duty of the said Secretary and Postmaster-General respectively to direct such payments by the said collectors and receivers at all the said places, at least as often as once in each week, and as much more frequently, in all cases, as they in their discretion may think proper.

* * * * * * * *

SEC. 18. *Be it further enacted*, That on . . . [January 1, 1847] . . . , and thereafter, all duties, taxes, sales of public lands, debts, and sums of money accruing or becoming due to the United States, and also all sums due for postages or otherwise, to the general post-office department, shall be paid in gold and silver coin only, or in treasury notes issued under the authority of the United States. . . .

SEC. 19. *And be it further enacted*, That on . . . [April 1, 1847] . . . , and thereafter, every officer or agent engaged in making disbursements on account of the United States, or of the general post-office, shall make all payments in gold and silver coin, or in treasury notes, if the creditor agree to receive said notes in payment. . . .

* * * * * * * *

No. 101. Treaty with Mexico

February 2, 1848

THE treaty which closed the Mexican war was negotiated on the part of the United States by N. P. Trist, who, previous to his appointment as commissioner and confidential agent, had been chief clerk of the Department of State. He was instructed "to demand the cession of New Mexico and California in satisfaction of claims against Mexico." He left Washington April 16, 1847, and arrived at Vera Cruz, the headquarters of the United States army, May 6. November 16 he received a letter of recall, but disregarded it, and Feb. 2, 1848, concluded with Mexico the treaty of Guadalupe Hidalgo. Trist remained in Mexico until April 8, when an order for his arrest compelled him to leave. The treaty was sent to the Senate Feb. 23, and ratified by that body, with amendments, March 10, by a vote of 38 to 14. The suggested amendments were accepted by Mexico, and May 30 ratifications were ex-

changed. An act of July 29, 1848, provided for the payment of liquidated claims against Mexico. The survey of the boundary line was provided for by an act of Aug. 12, and acts of Feb. 26 and March 3, 1849, and March 3, 1851, made further provision for the settlement of Mexican claims.

References. — English and Spanish *text* in *U. S. Stat. at Large*, IX., 922–942. The papers accompanying the treaty, and the proceedings of the Senate, are in *Senate Exec. Doc.* 52, 30th Cong., 1st Sess.; other papers are in *House Exec. Doc.* 40, 56, 60, 69, and 70. On the negotiation of the treaty, see *House Exec. Doc.* 50, 30th Cong., 2d Sess.; on the part played by Trist, *Senate Rep.* 261, 41st Cong., 2d Sess. The discussions in Congress may be followed in *Cong. Globe*, 30th Cong., 1st Sess., and appendix. See also Wharton's *Intern. Law Digest* (ed. 1887), II., 256–261.

* * * * * * * *

Article I.

There shall be firm and universal peace between the United States of America and the Mexican republic, and between their respective countries, territories, cities, towns, and people, without exception of places or persons.

* * * * * * * *

Article V.[1]

The boundary line between the two republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea; from thence up the middle of that river, following the deepest channel, where it has more than one, to the point where it strikes the southern boundary of New Mexico; thence, westwardly, along the whole southern boundary of New Mexico (which runs north of the town called *Paso*) to its western termination; thence, northward, along the western line of New Mexico, until it intersects the first branch of the River Gila; (or if it should not intersect any branch of that river, then to the point on the said line nearest to such branch, and thence in a direct line to the same;) thence down the middle of the said branch and of the said river, until it empties into the Rio Colorado; thence across the Rio Colorado, following the division line between Upper and Lower California, to the Pacific Ocean. . . .

[1] Amended by Article I. of the treaty of Dec. 30, 1853. — Ed.

Article VI.[1]

The vessels and citizens of the United States shall, in all time, have a free and uninterrupted passage by the Gulf of California, and by the river Colorado below its confluence with the Gila, to and from their possessions situated north of the boundary line defined in the preceding article; it being understood that this passage is to be by navigating the Gulf of California and the River Colorado, and not by land, without the express consent of the Mexican government.

If, by the examinations which may be made, it should be ascertained to be practicable and advantageous to construct a road, canal, or railway, which should in whole or in part run upon the River Gila, or upon its right or its left bank, within the space of one marine league from either margin of the river, the governments of both republics will form an agreement regarding its construction, in order that it may serve equally for the use and advantage of both countries.

Article VII.[2]

The River Gila, and the part of the Rio Bravo del Norte lying below the southern boundary of New Mexico, being, agreeably to the fifth article, divided in the middle between the two republics, the navigation of the Gila and of the Bravo below said boundary shall be free and common to the vessels and citizens of both countries; and neither shall, without the consent of the other, construct any work that may impede or interrupt, in whole or in part, the exercise of this right; not even for the purpose of favoring new methods of navigation. Nor shall any tax or contribution, under any denomination or title, be levied upon vessels, or persons navigating the same, or upon merchandise or effects transported thereon, except in the case of landing upon one of their shores. If, for the purpose of making the said rivers navigable, or for maintaining them in such state, it should be necessary or advantageous to establish any tax or contribution, this shall not be done without the consent of both governments.

[1] Amended by Article IV. of the treaty of Dec. 30, 1853. — Ed.
[2] Amended by Article IV. of the treaty of Dec. 30, 1853. — Ed.

The stipulations contained in the present article shall not impair the territorial rights of either republic within its established limits.

ARTICLE VIII.

Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican republic, retaining the property which they possess in the said territories, or disposing thereof, and removing the proceeds wherever they please, without their being subjected, on this account, to any contribution, tax, or charge whatever.

Those who shall prefer to remain in the said territories, may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States. But they shall be under the obligation to make their election within one year from the date of the exchange of ratifications of this treaty; and those who shall remain in the said territories after the expiration of that year, without having declared their intention to retain the character of Mexicans, shall be considered to have elected to become citizens of the United States.

In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it guaranties equally ample as if the same belonged to citizens of the United States.

ARTICLE IX.[1]

Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States, and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the constitu-

[1] See protocol, May 26, 1848: *Treaties and Conventions* (ed. 1889), 692, 693 — ED.

tion; and in the mean time shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction.

[Article X., relating to Mexican land grants in the ceded territory, was stricken out by the Senate (see protocol, May 26, 1848). Article XI., binding the United States to prevent Indian incursions into Mexican territory, and to restore Mexican prisoners taken by Indians, was abrogated by Article II. of the treaty of Dec. 30, 1853.]

Article XII.

In consideration of the extension acquired by the boundaries of the United States, as defined in the fifth article of the present treaty, the government of the United States engages to pay to that of the Mexican republic the sum of fifteen millions of dollars. . . .

Article XIII.

The United States engage, moreover, to assume and pay to the claimants all the amounts now due them, and those hereafter to become due, by reason of the claims already liquidated and decided against the Mexican republic, under the conventions between the two republics severally concluded on . . . [April 11, 1839, and January 30, 1843] . . .

Article XIV.

The United States do furthermore discharge the Mexican republic from all claims of citizens of the United States, not heretofore decided against the Mexican government, which may have arisen previously to the date of the signature of this treaty; which discharge shall be final and perpetual, whether the said claims be rejected or be allowed by the board of commissioners provided for in the following article, and whatever shall be the total amount of those allowed.

Article XV.

The United States, exonerating Mexico from all demands on account of the claims of their citizens mentioned in the preceding article, and considering them entirely and forever cancelled, what-

ever their amount may be, undertake to make satisfaction for the same, to an amount not exceeding three and one quarter millions of dollars. . . .

* * * * * * * *

[Article xvii continues for eight years the treaty of amity, commerce, and navigation of April 5, 1831, between the United States of America and the United Mexican States, "except the additional article, and except so far as the stipulations of the said treaty may be incompatible with any stipulation contained in the present treaty;" subject, however, to termination thereafter on one year's notice by either party.[1]]

Article XXI.

If unhappily any disagreement should hereafter arise between the governments of the two republics, whether with respect to the interpretation of any stipulation in this treaty, or with respect to any other particular concerning the political or commercial relations of the two nations, the said governments, in the name of those nations, do promise to each other that they will endeavor, in the most sincere and earnest manner, to settle the differences so arising, and to preserve the state of peace and friendship in which the two countries are now placing themselves; using, for this end, mutual representations and pacific negotiations. And if, by these means, they should not be enabled to come to an agreement, a resort shall not, on this account, be had to reprisals, aggression, or hostility of any kind, by the one republic against the other, until the Government of that which deems itself aggrieved shall have maturely considered, in the spirit of peace and good neighborship, whether it would not be better that such difference should be settled by the arbitration of commissioners appointed on each side, or by that of a friendly nation. And should such course be proposed by either party, it shall be acceded to by the other, unless deemed by it altogether incompatible with the nature of the difference, or the circumstances of the case.

* * * * * * * *[2]

[1] *Cf.* Article V. of the treaty of Dec. 30, 1853. — Ed.

[2] Signed: "N. P. Trist, Luis G. Cuevas, Bernardo Couto, Migl Atristain." — Ed.

Compromise of 1850

AUGUST 8, 1846, in the debate in the House on the bill appropriating $2,000,000 to purchase territory from Mexico, Wilmot of Pennsylvania moved as an amendment the proviso "that, as an express and fundamental condition to the acquisition of any territory from the Republic of Mexico by the United States, by virtue of any treaty which may be negotiated between them, and to the use by the Executive of the moneys herein appropriated, neither slavery nor involuntary servitude shall ever exist in any part of said territory, except for crime, whereof the party shall first be duly convicted." The amendment was not accepted, and later attempts to engraft the proviso upon bills to organize the Territory of Oregon failed. In 1848 a bill to organize the Territories of Oregon, New Mexico, and California, with a provision "that all questions concerning slavery in those Territories should be referred to the United States Supreme Court for decision," passed the Senate, but failed in the House. The act of Aug. 14, 1848, organizing the Territory of Oregon, applied to the new Territory the provisions of the articles of compact in the Ordinance of 1787. A bill to establish territorial governments in New Mexico and California, with the Wilmot proviso, passed the House in 1849, but was not acted on in the Senate. Later in the session, the Senate attempted to provide for the organization of the two Territories by means of a "rider" on the general appropriation bill, but the attempt was defeated in the House.

In May, 1848, the Democratic National Convention had rejected, 36 to 216, a resolution offered by Yancey of Alabama, "That the doctrine of non-interference with the rights of property of any portion of the people of this confederacy, be it in the States or Territories thereof, by any other than the parties interested in them, is the true republican doctrine, recognized by this body." The doctrine of "squatter sovereignty" embodied in this resolution now began to be urged in opposition to the doctrine of the Wilmot proviso, and the issue was joined on the question of prohibiting slavery in the new Territories, or allowing the people of each Territory to establish or exclude slavery as they might see fit.

In June, 1849, the people of California adopted a State constitution prohibiting slavery. In his annual message of Dec. 4, President Taylor recommended the admission of California, but suggested the advisability of awaiting popular action in New Mexico before legislating for the organization of that region. January 29, 1850, Clay submitted in the Senate a series of resolutions, intended to afford a basis for adjusting the differences regarding the status and treatment of slavery in the Territories. On the 13th of February the constitution of California was transmitted to Congress. April 18, by a vote of 30 to 22, Clay's resolutions were referred to a select committee of thirteen, of which Clay was chairman. May 8 the committee submitted its report, together with two bills, one to admit California as a State, to establish territorial governments for Utah and New Mexico, and making proposals to

Texas for the establishment of her western and northern boundaries, and the other to suppress the slave trade in the District of Columbia.

The first of these bills, known as the "omnibus bill," was taken up in the Senate May 9. June 17, by a vote of 38 to 12, an amendment applying to Utah the doctrine of "squatter sovereignty" was agreed to; July 31 the sections relating to California, New Mexico, and Texas were stricken out, and Aug. 1 the remainder of the bill passed the Senate as "an act to establish a territorial government for Utah." The House passed the bill Sept. 7, by a vote of 97 to 85, and on the 9th the act was approved. A bill to adjust the Texan boundary passed the Senate Aug. 10, by a vote of 30 to 20; on the 15th the Senate passed the New Mexico bill, the vote being 27 to 10. The House added the New Mexico bill to the Texas bill as an amendment, and Sept. 6 passed the bill in this form by a vote of 108 to 97. The Senate concurred in the House amendment, and on the 9th the act was approved. The bill to admit California passed the Senate Aug. 13, 34 to 18, and the House Sept. 7, 150 to 56; Sept. 9 the act was approved. The fugitive slave bill passed the Senate Aug. 26, without a division, the vote on the third reading being 27 to 12; the House passed the bill Sept. 12, without debate, by a vote of 109 to 76, and on the 18th the act was approved. The act was repealed June 28, 1864. The act to suppress the slave trade in the District of Columbia, the last of the compromise measures, passed the Senate Sept. 16, by a vote of 33 to 19, and the House on the following day, by a vote of 124 to 59; on the 20th the act was approved.

REFERENCES. — The *text* is indicated at the end of each of the extracts following. For the proceedings of Congress, see the *House and Senate Journals*, 31st Cong., 1st Sess.; for the discussions, see the *Cong. Globe*, and appendix, or Benton's *Abridgment*, XVI. A large number of memorials and resolutions are collected in the *House and Senate Misc. Doc.* of this session; see also *Senate Rep.* 12. See also Webster's *Works* (ed. 1857), V., 324–366, 373–405, 412–438; Calhoun's *Works* (ed. 1854), IV., 535–578; Seward's *Works* (ed. 1853), I., 31–131; Pierce's *Summer*, III., chaps 34, 35.

No. 102. Clay's Resolutions

January 29, 1850

It being desirable, for the peace, concord, and harmony of the Union of these States, to settle and adjust amicably all existing questions of controversy between them arising out of the institution of slavery upon a fair, equitable and just basis: therefore,

1. *Resolved*, That California, with suitable boundaries, ought, upon her application to be admitted as one of the States of this

Union, without the imposition by Congress of any restriction in respect to the exclusion or introduction of slavery within those boundaries.

2. *Resolved*, That as slavery does not exist by law, and is not likely to be introduced into any of the territory acquired by the United States from the republic of Mexico, it is inexpedient for Congress to provide by law either for its introduction into, or exclusion from, any part of the said territory; and that appropriate territorial governments ought to be established by Congress in all of the said territory, not assigned as the boundaries of the proposed State of California, without the adoption of any restriction or condition on the subject of slavery.

3. *Resolved*, That the western boundary of the State of Texas ought to be fixed on the Rio del Norte, commencing one marine league from its mouth, and running up that river to the southern line of New Mexico; thence with that line eastwardly, and so continuing in the same direction to the line as established between the United States and Spain, excluding any portion of New Mexico, whether lying on the east or west of that river.

4. *Resolved*, That it be proposed to the State of Texas, that the United States will provide for the payment of all that portion of the legitimate and bona fide public debt of that State contracted prior to its annexation to the United States, and for which the duties on foreign imports were pledged by the said State to its creditors, not exceeding the sum of —— dollars, in consideration of the said duties so pledged having been no longer applicable to that object after the said annexation, but having thenceforward become payable to the United States; and upon the condition, also, that the said State of Texas shall, by some solemn and authentic act of her legislature or of a convention, relinquish to the United States any claim which it has to any part of New Mexico.

5. *Resolved*, That it is inexpedient to abolish slavery in the District of Columbia whilst that institution continues to exist in the State of Maryland, without the consent of that State, without the consent of the people of the District, and without just compensation to the owners of slaves within the District.

6. *But, resolved*, That it is expedient to prohibit, within the District, the slave trade in slaves brought into it from States or

places beyond the limits of the District, either to be sold therein as merchandise, or to be transported to other markets without the District of Columbia.

7. *Resolved*, That more effectual provision ought to be made by law, according to the requirement of the constitution, for the restitution and delivery of persons bound to service or labor in any State, who may escape into any other State or Territory in the Union. And,

8. *Resolved*, That Congress has no power to prohibit or obstruct the trade in slaves between the slaveholding States; but that the admission or exclusion of slaves brought from one into another of them, depends exclusively upon their own particular laws.

[*Senate Jour.*, 31 Cong., 1st Sess., pp. 118, 119.]

No. 103. Extract from the Report of the Committee of Thirteen

May 8, 1850

. . . The views and recommendations contained in this report may be recapitulated in a few words:

1. The admission of any new State or States formed out of Texas to be postponed until they shall hereafter present themselves to be received into the Union, when it will be the duty of Congress fairly and faithfully to execute the compact with Texas by admitting such new State or States;

2. The admission forthwith of California into the Union, with the boundaries which she has proposed;

3. The establishment of territorial governments, without the Wilmot proviso, for New Mexico and Utah, embracing all the territory recently acquired by the United States from Mexico not contained in the boundaries of California;

4. The combination of these two last-mentioned measures in the same bill;

5. The establishment of the western and northern boundary of Texas, and the exclusion from her jurisdiction of all New Mexico, with the grant to Texas of a pecuniary equivalent; and the sec

tion for that purpose to be incorporated in the bill admitting California and establishing territorial governments for Utah and New Mexico;

6. More effectual enactments of law to secure the prompt delivery of persons bound to service or labor in one State, under the laws thereof, who escape into another State; and,

7. Abstaining from abolishing slavery; but, under a heavy penalty, prohibiting the slave trade in the District of Columbia.

[*Senate Rep.* 123, 31st Cong., 1st Sess., p. 11.]

No. 104. Extract from the Utah Act

September 9, 1850

An Act to establish a Territorial Government for Utah.

Be it enacted . . . , That all that part of the territory of the United States included within the following limits, to wit: bounded on the west by the State of California, on the north by the Territory of Oregon, and on the east by the summit of the Rocky Mountains, and on the south by the thirty-seventh parallel of north latitude, be, and the same is hereby, created into a temporary government, by the name of the Territory of Utah; and, when admitted as a State, the said Territory, or any portion of the same, shall be received into the Union, with or without slavery, as their constitution may prescribe at the time of their admission: *Provided*, That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said Territory into two or more Territories, in such manner and at such times as Congress shall deem convenient and proper, or from attaching any portion of said Territory to any other State or Territory of the United States. . . .

[*U. S. Stat. at Large*, IX., 453.]

No. 105. Extract from the Texas and New Mexico Act

September 9, 1850

An Act proposing to the State of Texas the Establishment of her Northern and Western Boundaries, the Relinquishment by the said State of all Territory claimed by her exterior to said Boundaries, and of all her claims upon the United States, and to establish a territorial Government for New Mexico.

Be it enacted . . . , That the following propositions shall be, and the same hereby are, offered to the State of Texas, which, when agreed to by the said State, in an act passed by the general assembly, shall be binding and obligatory, upon the United States, and upon the said State of Texas: *Provided*, The said agreement by the said general assembly shall be given on or before . . . [December 1, 1850] . . . :

First. The State of Texas will agree that her boundary on the north shall commence at the point at which the meridian of one hundred degrees west from Greenwich is intersected by the parallel of thirty-six degrees thirty minutes north latitude, and shall run from said point due west to the meridian of one hundred and three degrees west from Greenwich; thence her boundary shall run due south to the thirty-second degree of north latitude; thence on the said parallel of thirty-two degrees of north latitude to the Rio Bravo del Norte, and thence with the channel of said river to the Gulf of Mexico.

Second. The State of Texas cedes to the United States all her claim to territory exterior to the limits and boundaries which she agrees to establish by the first article of this agreement.

Third. The State of Texas relinquishes all claim upon the United States for liability of the debts of Texas, and for compensation or indemnity for the surrender to the United States of her ships, forts, arsenals, custom-houses, custom-house revenue, arms and munitions of war, and public buildings with their sites, which became the property of the United States at the time of the annexation.

FOURTH. The United States, in consideration of said establishment of boundaries, cession of claim to territory, and relinquishment of claims, will pay to the State of Texas the sum of ten millions of dollars in a stock bearing five per cent. interest, and redeemable at the end of fourteen years, the interest payable half-yearly at the treasury of the United States.

* * * * * * * *

SEC. 2. *And be it further enacted*, That all that portion of the Territory of the United States bounded as follows: Beginning at a point in the Colorado River where the boundary line with the republic of Mexico crosses the same; thence eastwardly with the said boundary line to the Rio Grande; thence following the main channel of said river to the parallel of the thirty-second degree of north latitude; thence east with said degree to its intersection with the one hundred and third degree of longitude west of Greenwich; thence north with said degree of longitude to the parallel of thirty-eighth degree of north latitude; thence west with said parallel to the summit of the Sierra Madre; thence south with the crest of said mountains to the thirty-seventh parallel of north latitude; thence west with said parallel to its intersection with the boundary line of the State of California; thence with said boundary line to the place of beginning — be, and the same is hereby, erected into a temporary government, by the name of the Territory of New Mexico: *Provided*, That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said Territory into two or more Territories, in such manner and at such times as Congress shall deem convenient and proper, or from attaching any portion thereof to any other Territory or State: *And provided, further*, That, when admitted as a State, the said Territory, or any portion of the same, shall be received into the Union, with or without slavery, as their constitution may prescribe at the time of their admission.

[*U. S. Stat. at Large*, IX, 446, 447.]

No. 106. Fugitive Slave Act

September 18, 1850

An Act to amend, and supplementary to, the Act entitled "An Act respecting Fugitives from Justice, and Persons escaping from the Service of their Masters," approved . . . [February 12, 1793].

[Sections 1–4 relate to the appointment of commissioners, having concurrent jurisdiction with the judges of the circuit and district courts of the United States, and the superior courts of the territories, to perform the duties specified in the act.]

SEC. 5. *And be it further enacted,* That it shall be the duty of all marshals and deputy marshals to obey and execute all warrants and precepts issued under the provisions of this act, when to them directed; and should any marshal or deputy marshal refuse to receive such warrant, or other process, when tendered, or to use all proper means diligently to execute the same, he shall, on conviction thereof, be fined in the sum of one thousand dollars, to the use of such claimant, on the motion of such claimant, by the Circuit or District Court for the district of such marshal; and after arrest of such fugitive, by such marshal or his deputy, or whilst at any time in his custody under the provisions of this act, should such fugitive escape, whether with or without the assent of such marshal or his deputy, such marshal shall be liable, on his official bond, to be prosecuted for the benefit of such claimant, for the full value of the service or labor of said fugitive in the State, Territory, or District whence he escaped: and the better to enable the said commissioners, when thus appointed, to execute their duties faithfully and efficiently, in conformity with the requirements of the Constitution of the United States and of this act, they are hereby authorized and empowered, within their counties respectively, to appoint, in writing under their hands, any one or more suitable persons, from time to time, to execute all such warrants and other process as may be issued by them in the lawful performance of their respective duties; with authority to such commissioners, or the persons to be appointed by them, to execute process as aforesaid, to summon and call to their aid the bystanders, or *posse comitatus* of the proper county, when

necessary to ensure a faithful observance of the clause of the Constitution referred to, in conformity with the provisions of this act; and all good citizens are hereby commanded to aid and assist in the prompt and efficient execution of this law, whenever their services may be required, as aforesaid, for that purpose; and said warrants shall run, and be executed by said officers, any where in the State within which they are issued.

SEC. 6. *And be it further enacted*, That when a person held to service or labor in any State or Territory of the United States, has heretofore or shall hereafter escape into another State or Territory of the United States, the person or persons to whom such service or labor may be due, or his, her, or their agent or attorney, duly authorized, by power of attorney, in writing, . . . may pursue and reclaim such fugitive person, either by procuring a warrant from some one of the courts, judges, or commissioners aforesaid, of the proper circuit, district, or county, for the apprehension of such fugitive from service or labor, or by seizing and arresting such fugitive, where the same can be done without process, and by taking, or causing such person to be taken, forthwith before such court, judge, or commissioner, whose duty it shall be to hear and determine the case of such claimant in a summary manner; and upon satisfactory proof being made, by deposition or affidavit, in writing, to be taken and certified by such court, judge, or commissioner, or by other satisfactory testimony, duly taken and certified by some court, magistrate, justice of the peace, or other legal officer authorized to administer an oath and take depositions under the laws of the State or Territory from which such person owing service or labor may have escaped, with a certificate of such magistracy or other authority, as aforesaid, . . . and with proof, also by affidavit, of the identity of the person whose service or labor is claimed to be due as aforesaid, that the person so arrested does in fact owe service or labor to the person or persons claiming him or her, in the State or Territory from which such fugitive may have escaped as aforesaid, and that said person escaped, to make out and deliver to such claimant, his or her agent or attorney, a certificate setting forth the substantial facts as to the service or labor due from such fugitive to the claimant, and of his or her escape from the State or Territory in which he or she was arrested, with authority to such claimant, or his or her

agent or attorney, to use such reasonable force and restraint as may be necessary, under the circumstances of the case, to take and remove such fugitive person back to the State or Territory whence he or she may have escaped as aforesaid. In no trial or hearing under this act shall the testimony of such alleged fugitive be admitted in evidence; and the certificates in this and the first [fourth] section mentioned, shall be conclusive of the right of the person or persons in whose favor granted, to remove such fugitive to the State or Territory from which he escaped, and shall prevent all molestation of such person or persons by any process issued by any court, judge, magistrate, or other person whomsoever.

SEC. 7. *And be it further enacted*, That any person who shall knowingly and willingly obstruct, hinder, or prevent such claimant, his agent or attorney, or any person or persons lawfully assisting him, her, or them, from arresting such a fugitive from service or labor, either with or without process as aforesaid, or shall rescue, or attempt to rescue, such fugitive from service or labor, from the custody of such claimant, his or her agent or attorney, or other person or persons lawfully assisting as aforesaid, when so arrested, pursuant to the authority herein given and declared; or shall aid, abet, or assist such person so owing service or labor as aforesaid, directly or indirectly, to escape from such claimant, his agent or attorney, or other person or persons legally authorized as aforesaid; or shall harbor or conceal such fugitive, so as to prevent the discovery and arrest of such person, after notice or knowledge of the fact that such person was a fugitive from service or labor as aforesaid, shall, for either of said offences, be subject to a fine not exceeding one thousand dollars, and imprisonment not exceeding six months . . . ; and shall moreover forfeit and pay, by way of civil damages to the party injured by such illegal conduct, the sum of one thousand dollars, for each fugitive so lost as aforesaid. . . .

* * * * * * * *

SEC. 9. *And be it further enacted*, That, upon affidavit made by the claimant of such fugitive, his agent or attorney, after such certificate has been issued, that he has reason to apprehend that such fugitive will be rescued by force from his or their possession before he can be taken beyond the limits of the State in which the arrest is made, it shall be the duty of the officer making the

arrest to retain such fugitive in his custody, and to remove him to the State whence he fled, and there to deliver him to said claimant, his agent, or attorney. And to this end, the officer aforesaid is hereby authorized and required to employ so many persons as he may deem necessary to overcome such force, and to retain them in his service so long as circumstances may require. . . .

SEC. 10. *And be it further enacted*, That when any person held to service or labor in any State or Territory, or in the District of Columbia, shall escape therefrom, the party to whom such service or labor shall be due, his, her, or their agent or attorney, may apply to any court of record therein, or judge thereof in vacation, and make satisfactory proof to such court, or judge in vacation, of the escape aforesaid, and that the person escaping owed service or labor to such party. Whereupon the court shall cause a record to be made of the matters so proved, and also a general description of the person so escaping, with such convenient certainty as may be; and a transcript of such record, authenticated by the attestation of the clerk and of the seal of the said court, being produced in any other State, Territory, or district in which the person so escaping may be found, and being exhibited to any judge, commissioner, or other officer authorized by the law of the United States to cause persons escaping from service or labor to be delivered up, shall be held and taken to be full and conclusive evidence of the fact of escape, and that the service or labor of the person escaping is due to the party in such record mentioned. And upon the production by the said party of other and further evidence if necessary, either oral or by affidavit, in addition to what is contained in the said record of the identity of the person escaping, he or she shall be delivered up to the claimant. And the said court, commissioner, judge, or other person authorized by this act to grant certificates to claimants of fugitives, shall, upon the production of the record and other evidences aforesaid, grant to such claimant a certificate of his right to take any such person identified and proved to be owing service or labor as aforesaid, which certificate shall authorize such claimant to seize or arrest and transport such person to the State or Territory from which he escaped . . .

[*U. S. Stat. at Large*, IX., 462–465.]

No. 107. Act abolishing the Slave Trade in the District of Columbia

September 20, 1850

An Act to suppress the Slave Trade in the District of Columbia.

Be it enacted . . . , That from and after . . . [January 1, 1851], . . . it shall not be lawful to bring into the District of Columbia any slave whatever, for the purpose of being sold, or for the purpose of being placed in depot, to be subsequently transferred to any other State or place to be sold as merchandize. And if any slave shall be brought into the said District by its owner, or by the authority or consent of its owner, contrary to the provisions of this act, such slave shall thereupon become liberated and free.

SEC. 2. *And be it further enacted*, That it shall and may be lawful for each of the corporations of the cities of Washington and Georgetown, from time to time, and as often as may be necessary, to abate, break up, and abolish any depot or place of confinement of slaves brought into the said District as merchandize, contrary to the provisions of this act, by such appropriate means as may appear to either of the said corporations expedient and proper. And the same power is hereby vested in the Levy Court of Washington county, if any attempt shall be made, within its jurisdictional limits, to establish a depot or place of confinement for slaves brought into the said District as merchandize for sale contrary to this act.

[*U. S. Stat. at Large*, IX., 467, 468.]

No. 108. Treaty with Mexico

December 30, 1853

THE interest of the United States in a transportation route across the isthmus of Tehuantepec occasioned extended diplomatic correspondence between the United States and Mexico. In addition, the running of the boundary line under the treaty of Guadalupe Hidalgo had been attended with difficulties. Both questions were dealt with in the treaty of Dec. 30, 1853, usually

known as the Gadsden treaty. The ratifications were exchanged at Washington June 30, 1854. The area acquired from Mexico was 45,535 square miles.

REFERENCES. — *Text* in *U. S. Stat. at Large*, X., 1031–1037. The diplomatic correspondence is in *Senate Doc.* 97, 32d Cong., 1st Sess. On the question of boundary, see *Senate Doc.* 34, 31st Cong., 1st Sess.; *Senate Doc.* 119, 120, 121, 131, 32d Cong., 1st Sess.; *Senate Rep.* 345, 32d Cong., 1st Sess.; *Senate Doc.* 55, 33d Cong., 2d Sess.; *Senate Doc.* 57, 34th Cong., 1st Sess.

* * * * * * * *

ARTICLE I.

The Mexican Republic agrees to designate the following as her true limits with the United States for the future: retaining the same dividing line between the two Californias as already defined and established, according to the 5th article of the treaty of Guadalupe Hidalgo, the limits between the two republics shall be as follows: Beginning in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, as provided in the 5th article of the treaty of Guadalupe Hidalgo; thence, as defined in the said article, up the middle of that river to the point where the parallel of 31° 47′ north latitude crosses the same; thence due west one hundred miles; thence south to the parallel of 31° 20′ north latitude; thence along the said parallel of 31° 20′ to the 111th meridian of longitude west of Greenwich; thence in a straight line to a point on the Colorado River twenty English miles below the junction of the Gila and Colorado Rivers; thence up the middle of the said river Colorado until it intersects the present line between the United States and Mexico. . . .

* * * * * * * *

ARTICLE III.

In consideration of the foregoing stipulations, the Government of the United States agrees to pay to the government of Mexico, in the city of New York, the sum of ten millions of dollars . . .[1]

ARTICLE IV.

The provisions of the 6th and 7th articles of the treaty of Guadalupe Hidalgo having been rendered nugatory, for the most part,

[1] The appropriation was made by act of June 29, 1854: *U. S. Stat. at Large*, X., 301. — ED.

by the cession of territory granted in the first article of this treaty, the said articles are hereby abrogated and annulled, and the provisions as herein expressed substituted therefor. The vessels, and citizens of the United States shall, in all time, have free and uninterrupted passage through the Gulf of California, to and from their possessions situated north of the boundary line of the two countries. It being understood that this passage is to be by navigating the Gulf of California and the river Colorado, and not by land, without the express consent of the Mexican government; and precisely the same provisions, stipulations, and restrictions, in all respects, are hereby agreed upon and adopted, and shall be scrupulously observed and enforced by the two contracting governments in reference to the Rio Colorado, so far and for such distance as the middle of that river is made their common boundary line by the first article of this treaty.

The several provisions, stipulations, and restrictions contained in the 7th article of the treaty of Guadalupe Hidalgo shall remain in force only so far as regards the Rio Bravo del Norte, below the initial of the said boundary provided in the first article of this treaty; that is to say, below the intersection of the 31° 47′ 30″ parallel of latitude, with the boundary line established by the late treaty dividing said river from its mouth upwards, according to the fifth article of the treaty of Guadalupe.

* * * * * * * *

Article VIII.

The Mexican Government having on the 5th of February, 1853, authorized the early construction of a plank and railroad across the Isthmus of Tehuantepec, and, to secure the stable benefits of said transit way to the persons and merchandise of the citizens of Mexico and the United States, it is stipulated that neither government will interpose any obstacle to the transit of persons and merchandise of both nations; and at no time shall higher charges be made on the transit of persons and property of citizens of the United States, than may be made on the persons and property of other foreign nations, nor shall any interest in said transit way, nor in the proceeds thereof, be transferred to any foreign government.

The United States, by its agents, shall have the right to trans-

port across the isthmus, in closed bags, the mails of the United States not intended for distribution along the line of communication; also the effects of the United States government and its citizens, which may be intended for transit, and not for distribution on the isthmus, free of custom-house or other charges by the Mexican government. Neither passports nor letters of security will be required of persons crossing the isthmus and not remaining in the country.

When the construction of the railroad shall be completed, the Mexican government agrees to open a port of entry in addition to the port of Vera Cruz, at or near the terminus of said road on the Gulf of Mexico.

The two governments will enter into arrangements for the prompt transit of troops and munitions of the United States, which that government may have occasion to send from one part of its territory to another, lying on opposite sides of the continent.

The Mexican government having agreed to protect with its whole power the prosecution, preservation, and security of the work, the United States may extend its protection as it shall judge wise to it when it may feel sanctioned and warranted by the public or international law.

* * * * * * * *[1]

Kansas-Nebraska Act

1854

THE first suggestion of a territorial organization for the region between the western boundary of Missouri and the Rocky Mountains, which had been left without organization upon the admission of Missouri in 1821, seems to have been made in 1844, when Wilkins, Secretary of War, proposed the formation of Nebraska Territory as preliminary to the extension of military posts in that direction. A bill to establish the Territory of Nebraska was introduced in the House Dec. 17, 1844, by Douglas of Illinois, but no action was taken. A bill with the same object, brought in March 15, 1848, by Douglas, now a member of the Senate, likewise came to nothing. A bill to attach Nebraska to the surveying district of Arkansas, introduced in the Senate July 28, 1848,

[1] Signed: "James Gadsden, Manuel Diez de Bonilla, José Salazar Ylarreguil, J. Mariano Monterde." — ED.

stopped with the Committee on Public Lands. A third bill to organize the Territory of Nebraska, also introduced by Douglas, was considered by the Senate Dec. 20, 1848, and recommitted.

December 13, 1852, Hall of Missouri introduced in the House a bill to organize the Territory of Platte. The bill went to the Committee on Territories, and as such was not reported. February 2, 1853, however, Richardson of Illinois reported from the committee a bill to organize the Territory of Nebraska, which passed the House Feb. 10, by a vote of 98 to 43. The Senate Committee on Territories reported the bill on the 17th, without amendments; March 4, by a vote of 23 to 17, consideration was refused. This bill did not propose to legislate slavery into the new territory. "The opposition to it came from Southern members who were preparing, but were not yet ready to announce, their next advanced claim, that the compromise of 1850 had superseded and voided that of 1820, abolished the prohibition of slavery in the territory north of the Missouri compromise line, and opened it to the operation of squatter sovereignty" (Johnston).

The thirty-third Congress met Dec. 5, 1853. December 14 Senator Dodge of Iowa introduced a bill to organize the Territory of Nebraska. The bill, which appears to have been identical with Richardson's bill of the previous session, provided for the organization of the whole region between the parallels of 36° 30′ and 43° 30′ on the south and north, Missouri and Iowa on the east, and the Rocky Mountains on the west. A substitute for this bill, with the same provision as to slavery as that which had been inserted in the Utah and New Mexico bills, was reported by Douglas, from the Committee on Territories, Jan. 4, 1854. The declaration regarding slavery was satisfactory to neither party, and on the 16th Dixon of Kentucky gave notice of an amendment explicitly exempting the proposed territory from the operation of the Missouri compromise, to which Sumner of Massachusetts responded with an amendment extending the Missouri compromise to the new territory. On the 23d Douglas reported that the committee had prepared several new amendments to the bill, changing the southern boundary from 36° 30′ to 37°, providing for two territories instead of one, and declaring the Missouri compromise inoperative in the new territories, on the ground that it had been superseded by the compromise measures of 1850. The bill as thus amended Douglas proposed to substitute for the bill previously reported. Debate in Committee of the Whole began Jan. 30. February 6 Douglas offered an amendment by which the Missouri compromise was to be declared "inconsistent" with the legislation of 1850, following this the next day with another amendment in the words of sec. 14 of the act as finally passed. This last amendment was agreed to on the 15th, by a vote of 35 to 10. March 4 the bill passed the Senate, after an all-night session, by a vote of 37 to 14.

In the meantime Representative Miller of Missouri had introduced in the House, Dec. 22, a bill to organize the Territory of Nebraska. The bill went to the Committee on Territories, from which Richardson reported, Jan. 31, a bill to organize the Territories of Nebraska and Kansas. A minority report, advocating the application of squatter sovereignty to the two territories, was submitted by English of Indiana. The House bill did not regularly come up for consideration until May 8, but from Feb. 14 to April 28 either the House

or Senate bill, and the general subject of territorial governments for Kansas and Nebraska, were discussed almost daily, regardless of the business nominally before the House. March 21 the Senate bill was disposed of by referring it to the Committee of the Whole, and was not again considered. May 8 Richardson called up the Kansas-Nebraska bill, thirty bills and resolutions being successively laid aside until the bill was reached. The debate continued with increasing violence until the 22d, when, by a vote of 113 to 100, the House passed the bill with amendments. Douglas championed the bill in the Senate, where the debate was attended with intense excitement and frequent disorder. The bill passed the Senate May 26, without a division, and on the 30th the act was approved.

The form of government provided by the act did not differ essentially from that contained in other territorial acts. The extracts from the act following are limited to the sections defining the boundaries of the two territories, and the status of slavery.

REFERENCES. — The *text* is indicated in connection with each extract, following. The *House and Senate Journals*, 33d Cong., 1st Sess., give the record of proceedings; both proceedings and debates are reported at length in the *Cong. Globe*, and appendix.

No. 109. Douglas's Report

January 4, 1854

* * * * * * * *

The principal amendments which your committee deem it their duty to commend to the favorable action of the Senate, in a special report, are those in which the principles established by the compromise measures of 1850, so far as they are applicable to territorial organizations, are proposed to be affirmed and carried into practical operation within the limits of the new Territory.

The wisdom of those measures is attested, not less by their salutary and beneficial effects, in allaying sectional agitation and restoring peace and harmony to an irritated and distracted people, than by the cordial and almost universal, approbation with which they have been received and sanctioned by the whole country. In the judgment of your committee, those measures were intended to have a far more comprehensive and enduring effect than the mere adjustment of the difficulties arising out of the recent acquisition of Mexican territory. They were designed to establish certain great principles, which would not only furnish adequate

remedies for existing evils, but, in all time to come, avoid the perils of a similar agitation, by withdrawing the question of slavery from the halls of Congress and the political arena, and committing it to the arbitrament of those who were immediately interested in, and alone responsible for its consequences. With the view of conforming their action to what they regard the settled policy of the government, sanctioned by the approving voice of the American people, your committee have deemed it their duty to incorporate and perpetuate, in their territorial bill, the principles and spirit of those measures. If any other consideration were necessary, to render the propriety of this course imperative upon the committee, they may be found in the fact, that the Nebraska country occupies the same relative position to the slavery question, as did New Mexico and Utah, when those territories were organized.

It was a disputed point, whether slavery was prohibited by law in the country acquired from Mexico. On the one hand it was contended, as a legal proposition, that slavery having been prohibited by the enactments of Mexico, according to the laws of nations, we received the country with all its local laws and domestic institutions attached to the soil, so far as they did not conflict with the Constitution of the United States; and that a law, either protecting or prohibiting slavery, was not repugnant to that instrument, as was evidenced by the fact, that one-half of the States of the Union tolerated, while the other half prohibited, the institution of slavery On the other hand it was insisted that, by virtue of the Constitution of the United States, every citizen had a right to remove to any Territory of the Union, and carry his property with him under the protection of law, whether that property consisted in persons or things. . . .

. . . a similar question has arisen in regard to the right to hold slaves in the proposed territory of Nebraska when the Indian laws shall be withdrawn, and the country thrown open to emigration and settlement. [The report quotes the section of the Missouri Enabling Act (No. 77, *ante*) relating to slavery, and continues:]

Under this section, as in the case of the Mexican law in New Mexico and Utah, it is a disputed point whether slavery is prohibited in the Nebraska country by *valid* enactment. The decision of this question involves the constitutional power of Congress to pass laws prescribing and regulating the domestic institutions

of the various territories of the Union. In the opinion of those eminent statesmen, who hold that Congress is invested with no rightful authority to legislate upon the subject of slavery in the territories, the 8th section of the act preparatory to the admission of Missouri is null and void; while the prevailing sentiment in large portions of the Union sustains the doctrine that the Constitution of the United States secures to every citizen an inalienable right to move into any of the territories with his property, of whatever kind and description, and to hold and enjoy the same under the sanction of law. Your committee do not feel themselves called upon to enter into the discussion of these controverted questions. They involve the same grave issues which produced the agitation, the sectional strife, and the fearful struggle of 1850. As Congress deemed it wise and prudent to refrain from deciding the matters in controversy then, either by affirming or repealing the Mexican laws, or by an act declaratory of the true intent of the Constitution and the extent of the protection afforded by it to slave property in the territories, so your committee are not prepared now to recommend a departure from the course pursued on that memorable occasion, either by affirming or repealing the 8th section of the Missouri act, or by any act declaratory of the meaning of the Constitution in respect to the legal points in dispute.

Your committee deem it fortunate for the peace of the country, and the security of the Union, that the controversy then resulted in the adoption of the compromise measures, which the two great political parties, with singular unanimity, have affirmed as a cardinal article of their faith, and proclaimed to the world, as a final settlement of the controversy and an end of the agitation. A due respect, therefore, for the avowed opinions of Senators, as well as a proper sense of patriotic duty, enjoins upon your committee the propriety and necessity of a strict adherence to the principles, and even a literal adoption of the enactments of that adjustment in all their territorial bills, so far as the same are not locally inapplicable. . . .

[The report here quotes various provisions of the compromise acts of 1850, and concludes]:

From these provisions it is apparent that the compromise measures of 1850 affirm and rest upon the following propositions — First: That all questions pertaining to slavery in the territories,

and in the new States to be formed therefrom, are to be left to the decision of the people residing therein, by their appropriate representatives, to be chosen by them for that purpose.

Second: That "all cases involving title to slaves," and "questions of personal freedom" are referred to the adjudication of the local tribunals, with the right of appeal to the Supreme Court of the United States.

Third: That the provisions of the Constitution of the United States, in respect to fugitives from service, is to be carried into faithful execution in all "the organized territories" the same as in the States. The substitute for the bill which your committee have prepared, and which is commended to the favorable action of the Senate, proposes to carry these propositions and principles into practical operation, in the precise language of the compromise measures of 1850.

[*Senate Rep.* 15, 33d Cong., 1st Sess.]

No. 110. Dixon's Proposed Amendment

January 16, 1854

SEC. 22. *And be it further enacted,* That so much of the 8th section of . . . [the Missouri Enabling Act of March 6, 1820] . . . as declares "That in all that territory ceded by France to the United States, under the name of Louisiana, which lies north of 36 degrees 30 minutes north latitude, slavery and involuntary servitude, otherwise than in the punishment of crimes whereof the parties shall have been duly convicted, shall be forever prohibited," shall not be so construed as to apply to the Territory contemplated by this act, or to any other Territory of the United States; but that the citizens of the several States or Territories shall be at liberty to take and hold their slaves within any of the Territories of the United States, or of the States to be formed therefrom, as if the said act, entitled as aforesaid, and approved as aforesaid, had never been passed.

[*Cong. Globe,* 33d Cong., 1st Sess., 175.]

No. 111. Sumner's Proposed Amendment

January 17, 1854

Provided, That nothing herein contained shall be construed to abrogate or in any way contravene . . . [the Missouri Enabling Act] . . . ; wherein it is expressly enacted that "in all that territory ceded by France to the United States, under the name of Louisiana, which lies north of thirty-six degrees and thirty minutes north latitude, not included within the limits of the State contemplated by this act, slavery and involuntary servitude, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted, shall be, and is hereby, forever prohibited."

[*Cong. Globe*, 33d Cong., 1st Sess., 186.]

No. 112. Extract from the Act to organize the Territories of Nebraska and Kansas

May 30, 1854

An Act to Organize the Territories of Nebraska and Kansas.

Be it enacted . . . , That all that part of the territory of the United States included within the following limits, except such portions thereof as are hereinafter expressly exempted from the operations of this act, to wit: beginning at a point in the Missouri River where the fortieth parallel of north latitude crosses the same; thence west on said parallel to the east boundary of the Territory of Utah, on the summit of the Rocky Mountains; thence on said summit northward to the forty-ninth parallel of north latitude; thence east on said parallel to the western boundary of the territory of Minnesota; thence southward on said boundary to the Missouri River; thence down the main channel of said river to the place of beginning, be, and the same is hereby, created into a temporary government by the name of the Territory of Nebraska; and when admitted as a State or States, the said Territory, or any portion

of the same, shall be received into the Union with or without slavery, as their constitution may prescribe at the time of their admission: . . .

* * * * * * * *

SEC. 9. [The section relates to the judicial system of the Territory.] . . . Writs of error, and appeals from the final decisions of said Supreme Court [of the Territory], shall be allowed, and may be taken to the Supreme Court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed one thousand dollars; except only that in all cases involving title to slaves, the said writs of error, or appeals shall be allowed and decided by the said Supreme Court, without regard to the value of the matter, property, or title in controversy; . . . *Provided*, that nothing herein contained shall be construed to apply to or affect the provisions of the . . . [Fugitive Slave acts of 1793 and 1850] . . .

SEC. 10. *And be it further enacted*, That the provisions of . . . [the Fugitive Slave acts of 1793 and 1850] . . . be, and the same are hereby, declared to extend to and be in full force within the limits of said Territory of Nebraska.

* * * * * * * *

SEC. 14. *And be it further enacted*, . . . That the Constitution, and all laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory of Nebraska as elsewhere within the United States, except the eighth section of the act preparatory to the admission of Missouri into the Union, approved . . . [March 6, 1820] . . . , which, being inconsistent with the principle of non-intervention by Congress with slavery in the States and Territories, as recognized by the legislation of eighteen hundred and fifty, commonly called the Compromise Measures, is hereby declared inoperative and void; it being the true intent and meaning of this act not to legislate slavery into any Territory or State, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States: *Provided*, That nothing herein

contained shall be construed to revive or put in force any law or regulation which may have existed prior to the act of . . . [March 6, 1820] . . . , either protecting, establishing, prohibiting, or abolishing slavery.

* * * * * * * *

SEC. 19. *And be it further enacted,* That all that part of the Territory of the United States included within the following limits, except such portions thereof as are hereinafter expressly exempted from the operations of this act, to wit, beginning at a point on the western boundary of the State of Missouri, where the thirty-seventh parallel of north latitude crosses the same; thence west on said parallel to the eastern boundary of New Mexico; thence north on said boundary to latitude thirty-eight; thence following said boundary westward to the east boundary of the Territory of Utah, on the summit of the Rocky Mountains; thence northward on said summit to the fortieth parallel of latitude; thence east on said parallel to the western boundary of the State of Missouri; thence south with the western boundary of said State to the place of beginning, be, and the same is hereby, created into a temporary government by the name of the Territory of Kansas; and when admitted as a State or States, the said Territory, or any portion of the same, shall be received into the Union with or without slavery, as their Constitution may prescribe at the time of their admission: . . .

[Sections 27, 28, and 32 apply to the Territory of Kansas the provisions of sections 9, 10, and 14, respectively.]

[*U. S. Stat. at Large,* X., 277–290.]

No. 113. Dred Scott Decision

March 6, 1857

THE main facts of the Dred Scott case (Dred Scott *v.* Sandford) are as follows: Dred Scott was a negro slave, the property of Dr. Emerson, a surgeon in the United States army. In 1834 Scott was taken by his owner from Missouri to the military post at Rock Island, Ill., and from thence, in 1836, to Fort Snelling, on the west bank of the Mississippi, within the limits of the territory acquired from France in 1803, and north of 36° 30′. There Scott, with the consent of his owner, married. In 1838 Emerson took Scott and his family back to Missouri. In 1847 Scott brought suit in the circuit court of the State of Missouri to recover his freedom, on the ground of previous resi-

dence in free territory. Judgment was rendered in his favor, but was reversed in 1848 by the Missouri supreme court, to which the case was carried on writ of error. In the meantime, Scott and his family passed under the control of John F. A. Sandford of New York. In 1853 Scott brought suit for damages against Sandford, in the United States circuit court for the district of Missouri, on the alleged ground of illegal detention of himself and family as slaves. The defendant pleaded that Scott, being a negro, and born of slave parents, could not be a citizen of Missouri, and hence could not be a party to a suit in the United States courts. The plea was overruled, but on other grounds Scott's claim to freedom was denied, and judgment rendered against him. The case was then appealed to the United States Supreme Court, where it was twice argued, in February and December, 1856. The decision was rendered March 6, 1857. Chief Justice Taney delivered the opinion of the court, but separate opinions were read by each of the eight associate justices. It has been well said that "to ascertain what the judgment of the court really was, it is necessary to compare the nine opinions and tabulate the results." The legal doctrine of the decision, so far as the question of slavery was concerned, was set aside by the Fourteenth Amendment to the Constitution.

References. — *Text* in 19 *Howard*, 393–633. For contemporary discussions, see Benton's *Historical and Legal Examination of the Dred Scott Case;* Gray and Lowell's *Legal Review of the Case of Dred Scott;* Foot's *Examination of the Case of Dred Scott.*

[*Opinion of the Court.*]

. . . There are two leading questions presented by the record:

1. Had the Circuit Court of the United States jurisdiction to hear and determine the case between these parties? And,

2. If it had jurisdiction, is the judgment it has given erroneous or not?

The plaintiff in error, who was also the plaintiff in the court below, was, with his wife and children, held as slaves by the defendant, in the State of Missouri, and he brought this action in the Circuit Court of the United States for that district, to assert the title of himself and his family to freedom.

The declaration is in the form usually adopted in that State to try questions of this description, and contains the averment necessary to give the court jurisdiction; that he and the defendant are citizens of different States; that is, that he is a citizen of Missouri, and the defendant a citizen of New York.

The defendant pleaded in abatement to the jurisdiction of the court, that the plaintiff was not a citizen of the State of Missouri, as alleged in his declaration, being a negro of African descent

whose ancestors were of pure African blood, and who were brought into this country and sold as slaves.

To this plea the plaintiff demurred, and the defendant joined in demurrer. The court overruled the plea, and gave judgment that the defendant should answer over. And he therefore put in sundry pleas in bar, upon which issues were joined, and at the trial the verdict and judgment were in his favor. Whereupon the plaintiff brought this writ of error.

Before we speak of the pleas in bar, it will be proper to dispose of the questions which have arisen on the plea in abatement.

That plea denies the right of the plaintiff to sue in a court of the United States, for the reasons therein stated.

If the question raised by it is legally before us, and the court should be of opinion that the facts stated in it disqualify the plaintiff from becoming a citizen, in the sense in which that word is used in the Constitution of the United States, then the judgment of the Circuit Court is erroneous, and must be reversed.

It is suggested, however, that this plea is not before us . . .

[But] if the plea and demurrer, and judgment of the court below upon it, are before us upon this record, the question to be decided is, whether the facts stated in the plea are sufficient to show that the plaintiff is not entitled to sue as a citizen in a court of the United States.

We think they are before us . . . and it becomes, therefore, our duty to decide whether the facts stated in the plea are or are not sufficient to show that the plaintiff is not entitled to sue as a citizen in a court of the United States.

This is certainly a very serious question, and one that now for the first time has been brought for decision before this court. But it is brought here by those who have a right to bring it, and it is our duty to meet it and decide it.

The question is simply this: can a negro, whose ancestors were imported into this country and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities, guarantied by that instrument to the citizen. One of these rights is the privilege of suing in a court of the United States in the cases specified in the Constitution. . . . The court must be understood as speak

ing in this opinion . . . of those persons [only] who are the descendants of Africans who were imported into this country and sold as slaves. . . .

We proceed to examine the case as presented by the pleadings.

The words "people of the United States" and "citizens" are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the government through their representatives. They are what we familiarly call the "sovereign people," and every citizen is one of this people, and a constituent member of this sovereignty. The question before us is, whether the class of persons described in the plea in abatement compose a portion of this people, and are constituent members of this sovereignty? We think they are not, and that they are not included, and were not intended to be included, under the word "citizens" in the Constitution, and can, therefore, claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the government might choose to grant them. . . .

In discussing this question, we must not confound the rights of citizenship which a state may confer within its own limits, and the rights of citizenship as a member of the Union. It does not by any means follow, because he has all the rights and privileges of a citizen of a State, that he must be a citizen of the United States. He may have all of the rights and privileges of the citizen of a State, and yet not be entitled to the rights and privileges of a citizen in any other State. For, previous to the adoption of the Constitution of the United States, every State had the undoubted right to confer on whomsoever it pleased the character of a citizen, and to endow him with all its rights. But this character, of course, was confined to the boundaries of the State, and gave him no rights or privileges in other States beyond those secured to him by the laws of nations and the comity of States. Nor have the several States surrendered the power of conferring

these rights and privileges by adopting the Constitution of the United States. Each State may still confer them upon an alien, or any one it thinks proper, or upon any class or description of persons; yet he would not be a citizen in the sense in which that word is used in the Constitution of the United States, nor entitled to sue as such in one of its courts, nor to the privileges and immunities of a citizen in the other States. The rights which he would acquire would be restricted to the State which gave them. . . .

It is very clear, therefore, that no State can, by any Act or law of its own, passed since the adoption of the Constitution, introduce a new member into the political community created by the Constitution of the United States. It cannot make him a member of this community by making him a member of its own. And for the same reason it cannot introduce any person, or description of persons, who were not intended to be embraced in this new political family, which the Constitution brought into existence, but were intended to be excluded from it.

The question then arises, whether the provisions of the Constitution, in relation to the personal rights and privileges to which the citizen of a State should be entitled, embraced the negro African race, at that time in this country, or who might afterwards be imported, who had then or should afterwards be made free in any State; and to put it in the power of a single State to make him a citizen of the United States, and endue him with the full rights of citizenship in every other State without their consent. Does the Constitution of the United States act upon him whenever he shall be made free under the laws of a State, and raised there to the rank of a citizen, and immediately clothe him with all the privileges of a citizen in every other State, and in its own courts?

The court think the affirmative of these propositions cannot be maintained. And if it cannot, the plaintiff in error could not be a citizen of the State of Missouri, within the meaning of the Constitution of the United States, and, consequently, was not entitled to sue in its courts.

It is true, every person, and every class and description of persons, who were at the time of the adoption of the Constitution recognized as citizens in the several States, became also citizens of this new political body; but none other; it was formed by

them, and for them and their posterity, but for no one else. And the personal rights and privileges guarantied to citizens of this new sovereignty were intended to embrace those only who were then members of the several state communities, or who should afterwards, by birthright or otherwise, become members, according to the provisions of the Constitution and the principles on which it was founded. It was the union of those who were at that time members of distinct and separate political communities into one political family, whose power, for certain specified purposes, was to extend over the whole territory of the United States. And it gave to each citizen rights and privileges outside of his State which he did not before possess, and placed him in every other State upon a perfect equality with its own citizens as to rights of person and rights of property; it made him a citizen of the United States.

It becomes necessary, therefore, to determine who were citizens of the several States when the Constitution was adopted. And in order to do this, we must recur to the governments and institutions of the thirteen Colonies, when they separated from Great Britain and formed new sovereignties. . . . We must inquire who, at that time, were recognized as the people or citizens of a State . . .

In the opinion of the court, the legislation and histories of the times, and the language used in the Declaration of Independence, show, that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument. . . .

The legislation of the different Colonies furnishes positive and indisputable proof of this fact. . . .

The language of the Declaration of Independence is equally conclusive. . . .

This state of public opinion had undergone no change when the Constitution was adopted, as is equally evident from its provisions and language.

The legislation of the States therefore shows, in a manner not to be mistaken, the inferior and subject condition of that race at the time the Constitution was adopted, and long afterwards, throughout the thirteen States by which that instrument was

framed; and it is hardly consistent with the respect due to these States, to suppose that they regarded at that time, as fellow-citizens and members of the sovereignty, a class of beings whom they had thus stigmatized; whom, as we are bound, out of respect to the State sovereignties, to assume they had deemed it just and necessary thus to stigmatize, and upon whom they had impressed such deep and enduring marks of inferiority and degradation; or that when they met in convention to form the Constitution, they looked upon them as a portion of their constituents, or designed to include them in the provisions so carefully inserted for the security and protection of the liberties and rights of their citizens. It cannot be supposed that they intended to secure to them rights, and privileges, and rank, in the new political body throughout the Union, which every one of them denied within the limits of its own dominion. More especially, it cannot be believed that the large slave-holding States regarded them as included in the word "citizens," or would have consented to a constitution which might compel them to receive them in that character from another State. For if they were so received, and entitled to the privileges and immunities of citizens, it would exempt them from the operation of the special laws and from the police regulations which they considered to be necessary for their own safety. It would give to persons of the negro race, who were recognized as citizens in any one State of the Union, the right to enter every other State whenever they pleased, singly or in companies, without pass or passport, and without obstruction, to sojourn there as long as they pleased, to go where they pleased at every hour of the day or night without molestation, unless they committed some violation of law for which a white man would be punished; and it would give them the full liberty of speech in public and in private upon all subjects upon which its own citizens might speak; to hold public meetings upon political affairs, and to keep and carry arms wherever they went. And all of this would be done in the face of the subject race of the same color, both free and slaves, inevitably producing discontent and insubordination among them, and endangering the peace and safety of the State. . . .

To all this mass of proof we have still to add, that Congress has repeatedly legislated upon the same construction of the Constitution that we have given. . . .

The conduct of the Executive Department of the government has been in perfect harmony upon this subject with this course of legislation. . . .

But it is said that a person may be a citizen, and entitled to that character, although he does not possess all the rights which may belong to other citizens; as, for example, the right to vote, or to hold particular offices; and that yet, when he goes into another State, he is entitled to be recognized there as a citizen, although the State may measure his rights by the rights which it allows to persons of a like character or class, resident in the State, and refuse to him the full rights of citizenship.

This argument overlooks the language of the provision in the Constitution of which we are speaking.

Undoubtedly, a person may be a citizen, that is, a member of the community who form the sovereignty, although he exercises no share of the political power, and is incapacitated from holding particular offices. . . .

So, too, a person may be entitled to vote by the law of the State, who is not a citizen even of the State itself. And in some of the States of the Union foreigners not naturalized are allowed to vote. And the State may give the right to free negroes and mulattoes, but that does not make them citizens of the State, and still less of the United States. And the provision in the Constitution giving privileges and immunities in other States, does not apply to them.

Neither does it apply to a person who, being the citizen of a State, migrates to another State. For then he becomes subject to the laws of the State in which he lives, and he is no longer a citizen of the State from which he removed. And the State in which he resides may then, unquestionably, determine his *status* or condition, and place him among the class of persons who are not recognized as citizens, but belong to an inferior and subject race; and may deny him the privileges and immunities enjoyed by its citizens.

. . . But if he ranks as a citizen of the State to which he belongs, within the meaning of the Constitution of the United States, then, whenever he goes into another State, the Constitution clothes him, as to the rights of person, with all the privileges and immunities which belong to citizens of the State. And if persons

of the African race are citizens of a state, and of the United States, they would be entitled to all of these privileges and immunities in every State, and the State could not restrict them; for they would hold these privileges and immunities, under the paramount authority of the Federal Government, and its courts would be bound to maintain and enforce them, the Constitution and laws of the State to the contrary notwithstanding. And if the State could limit or restrict them, or place the party in an inferior grade, this clause of the Constitution would be unmeaning, and could have no operation; and would give no rights to the citizen when in another State. He would have none but what the State itself chose to allow him. This is evidently not the construction or meaning of the clause in question. It guaranties rights to the citizen, and the State cannot withhold them. And these rights are of a character and would lead to consequences which make it absolutely certain that the African race were not included under the name of citizens of a State, and were not in the contemplation of the framers of the Constitution when these privileges and immunities were provided for the protection of the citizen in other States. . . .

And upon a full and careful consideration of the subject, the court is of opinion that, upon the facts stated in the plea in abatement, Dred Scott was not a citizen of Missouri within the meaning of the Constitution of the United States, and not entitled as such to sue in its courts; and, consequently, that the Circuit Court had no jurisdiction of the case, and that the judgment on the plea in abatement is erroneous. . . .

We proceed, therefore, to inquire whether the facts relied on by the plaintiff entitled him to his freedom. . . .

In considering this part of the controversy, two questions arise: 1st, Was he, together with his family, free in Missouri by reason of the stay in the territory of the United States hereinbefore mentioned? And 2d, If they were not, is Scott himself free by reason of his removal to Rock Island, in the State of Illinois, as stated in the above admissions?

We proceed to examine the first question.

The Act of Congress, upon which the plaintiff relies, declares that slavery and involuntary servitude, except as a punishment for crime, shall be forever prohibited in all that part of the territory

ceded by France, under the name of Louisiana, which lies north of thirty-six degrees thirty minutes north latitude, and not included within the limits of Missouri. And the difficulty which meets us at the threshold of this part of the inquiry is, whether Congress was authorized to pass this law under any of the powers granted to it by the Constitution; for if the authority is not given by that instrument, it is the duty of this court to declare it void and inoperative, and incapable of conferring freedom upon any one who is held as a slave under the laws of any one of the States.

The counsel for the plaintiff has laid much stress upon that article in the Constitution which confers on Congress the power "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States . . ."

It seems, however, to be supposed, that there is a difference between property in a slave and other property, and that different rules may be applied to it in expounding the Constitution of the United States. And the laws and usages of nations, and the writings of eminent jurists upon the relation of master and slave and their mutual rights and duties, and the powers which governments may exercise over it, have been dwelt upon in the argument.

But in considering the question before us, it must be borne in mind that there is no law of nations standing between the people of the United States and their government and interfering with their relation to each other. . . . And no laws or usages of other nations, or reasoning of statesmen or jurists upon the relations of master and slave, can enlarge the powers of the government, or take from the citizens the rights they have reserved. And if the Constitution recognizes the right of property of the master in a slave, and makes no distinction between that description of property and other property owned by a citizen, no tribunal, acting under the authority of the United States, whether it be legislative, executive, or judicial, has a right to draw such a distinction, or deny to it the benefit of the provisions and guarantees which have been provided for the protection of private property against the encroachments of the government.

Now . . . the right of property in a slave is distinctly and expressly affirmed in the Constitution. The right to traffic in it, like an ordinary article of merchandise and property, was guaranteed to the citizens of the United States, in every State that might

desire it, for twenty years. And the government in express terms is pledged to protect it in all future time, if the slave escapes from his owner. . . . And no word can be found in the Constitution which gives Congress a greater power over slave property, or which entitles property of that kind to less protection than property of any other description. The only power conferred is the power coupled with the duty of guarding and protecting the owner in his rights.

Upon these considerations, it is the opinion of the court that the Act of Congress which prohibited a citizen from holding and owning property of this kind in the territory of the United States north of the line therein mentioned, is not warranted by the Constitution, and is therefore void; and that neither Dred Scott himself, nor any of his family, were made free by being carried into this territory; even if they had been carried there by the owner, with the intention of becoming a permanent resident. . . .

But there is another point in the case which depends on state power and state law. And it is contended, on the part of the plaintiff, that he is made free by being taken to Rock Island, in the State of Illinois, independently of his residence in the territory of the United States; and being so made free, he was not again reduced to a state of slavery by being brought back to Missouri. . . . as Scott was a slave when taken into the State of Illinois by his owner, and was there held as such, and brought back in that character, his *status*, as free or slave, depended on the laws of Missouri, and not of Illinois.

It has, however, been urged in the argument, that by the laws of Missouri he was free on his return . . . But . . . we are satisfied, upon a careful examination of all the cases decided in the State courts of Missouri referred to, that it is now firmly settled by the decisions of the highest court in the State, that Scott and his family upon their return were not free, but were, by the laws of Missouri, the property of the defendant; and that the Circuit Court of the United States had no jurisdiction, when, by the laws of the State, the plaintiff was a slave, and not a citizen. . . .

Upon the whole, therefore, it is the judgment of this court, that it appears by the record before us that the plaintiff in error is not a citizen of Missouri, in the sense in which that word is

used in the Constitution; and that the Circuit Court of the United States, for that reason, had no jurisdiction in the case, and could give no judgment in it.

Its judgment for the defendant must, consequently, be reversed, and a mandate issued directing the suit to be dismissed for want of jurisdiction.

Justice Curtis's Dissenting Opinion

[After a learned discussion of law points, the opinion continues:]

So that, under the allegations contained in this plea, and admitted by the demurrer, the question is, whether any person of African descent, whose ancestors were sold as slaves in the United States, can be a citizen of the United States. If any such person can be a citizen, this plaintiff has the right to the judgment of the court that he is so; for no cause is shown by the plea why he is not so, except his descent and the slavery of his ancestors.

The 1st Section of the 2d Article of the Constitution uses the language, "a citizen of the United States at the time of the adoption of the Constitution." One mode of approaching this question is, to inquire who were citizens of the United States at the time of the adoption of the Constitution.

Citizens of the United States at the time of the adoption of the Constitution can have been no other than the citizens of the United States under the Confederation. . . .

To determine whether any free persons, descended from Africans held in slavery, were citizens of the United States under the Confederation, and consequently at the time of the adoption of the Constitution of the United States, it is only necessary to know whether any such persons were citizens of either of the States under the Confederation at the time of the adoption of the Constitution.

Of this there can be no doubt. At the time of the ratification of the Articles of Confederation, all free native-born inhabitants of the States of New Hampshire, Massachusetts, New York, New Jersey and North Carolina, though descended from African slaves, were not only citizens of those States, but such of them as had the other necessary qualifications possessed the franchise of electors, on equal terms with other citizens. . . .

I can find nothing in the Constitution which, *proprio vigore*, deprives of their citizenship any class of persons who were citizens of the United States at the time of its adoption, or who should be native-born citizens of any State after its adoption; nor any power enabling Congress to disfranchise persons born on the soil of any State, and entitled to citizenship of such State by its constitution and laws. And my opinion is, that, under the Constitution of the United States, every free person born on the soil of a State, who is a citizen of that State by force of its Constitution or laws, is also a citizen of the United States. . . .

The Constitution having recognized the rule that persons born within the several States are citizens of the United States, one of four things must be true:

First. That the Constitution itself has described what native-born persons shall or shall not be citizens of the United States; or,

Second. That it has empowered Congress to do so; or,

Third. That all free persons, born within the several States, are citizens of the United States; or,

Fourth. That it is left to each State to determine what free persons, born within its limits, shall be citizens of such State, and thereby be citizens of the United States. . . .

The conclusions at which I have arrived on this part of the case are:

First. That the free native-born citizens of each State are citizens of the United States.

Second. That as free colored persons born within some of the States are citizens of those States, such persons are also citizens of the United States.

Third. That every such citizen, residing in any State, has the right to sue and is liable to be sued in the federal courts, as a citizen of that State in which he resides.

Fourth. That as the plea to the jurisdiction in this case shows no facts, except that the plaintiff was of African descent, and his ancestors were sold as slaves, and as these facts are not inconsistent with his citizenship of the United States, and his residence in the State of Missouri, the plea to the jurisdiction was bad, and the judgment of the Circuit Court overruling it, was correct.

I dissent, therefore, from that part of the opinion of the majority of the court, in which it is held that a person of African descent

cannot be a citizen of the United States; and I regret I must go further, and dissent both from what I deem their assumption of authority to examine the constitutionality of the Act of Congress commonly called the Missouri Compromise Act, and the grounds and conclusions announced in their opinion. . . .

But as, in my opinion, the Circuit Court had jurisdiction, I am obliged to consider the question whether its judgment on the merits of the case should stand or be reversed.

The residence of the plaintiff in the State of Illinois, and the residence of himself and his wife in the Territory acquired from France lying north of latitude thirty-six degrees thirty minutes, and north of the State of Missouri, are each relied on by the plaintiff in error. As the residence in the Territory affects the plaintiff's wife and children as well as himself, I must inquire what was its effect.

The general question may be stated to be, whether the plaintiff's *status*, as a slave, was so changed by his residence within that Territory, that he was not a slave in the State of Missouri, at the time this action was brought.

In such cases, two inquiries arise, which may be confounded, but should be kept distinct.

The first is, what was the law of the Territory into which the master and slave went, respecting the relation between them?

The second is, whether the State of Missouri recognizes and allows the effect of that law of the Territory, on the *status* of the slave, on his return within its jurisdiction. . . .

To avoid misapprehension on this important and difficult subject, I will state, distinctly, the conclusions at which I have arrived. They are:

First. The rules of international law respecting the emancipation of slaves, by the rightful operation of the laws of another State or country upon the *status* of the slave, while resident in such foreign State or country, are part of the common law of Missouri, and have not been abrogated by any statute law of that State.

Second. The laws of the United States, constitutionally enacted which operated directly on and changed the *status* of a slave coming into the Territory of Wisconsin with his master, who went thither to reside for an indefinite length of time, in the performance of his duties as an officer of the United States, had a rightful opera

tion on the *status* of the slave, and it is in conformity with the rules of international law that this change of *status* should be recognized everywhere.

Third. The laws of the United States, in operation in the Territory of Wisconsin at the time of the plaintiff's residence there, did act directly on the *status* of the plaintiff, and change his *status* to that of a free man. . . .

Fifth. That the consent of the master that his slave, residing in a country which does not tolerate slavery, may enter into a lawful contract of marriage, attended with the civil rights and duties which belong to that condition, is an effectual act of emancipation. . . .

I have thus far assumed, merely for the purpose of the argument, that the laws of the United States, respecting slavery in this Territory, were Constitutionally enacted by Congress. It remains to inquire whether they are constitutional and binding laws. . . .

But it is insisted, that whatever other power Congress may have respecting the Territory of the United States, the subject of negro slavery forms an exception. . . .

While the regulation is one "respecting the Territory," while it is, in the judgment of Congress, "a needful regulation," and is thus completely within the words of the grant, while no other clause of the Constitution can be shown, which requires the insertion of an exception respecting slavery, and while the practical construction for a period of upwards of fifty years forbids such an exception, it would, in my opinion, violate every sound rule of interpretation to force that exception into the Constitution upon the strength of abstract political reasoning, which we are bound to believe the people of the United States thought insufficient to induce them to limit the power of Congress, because what they have said contains no such limitation. . . .

But it is further insisted that the Treaty of 1803, between the United States and France, by which this Territory was acquired, has so restrained the constitutional powers of Congress, that it cannot, by law, prohibit the introduction of slavery into that part of this Territory north and west of Missouri, and north of thirty-six degrees thirty minutes north latitude.

By a treaty with a foreign nation, the United States may rightfully stipulate that the Congress will or will not exercise its legis-

lative power in some particular manner, on some particular subject. . . . But that a treaty with a foreign nation can deprive the Congress of any part of the legislative power conferred by the people, so that it no longer can legislate as it was empowered by the Constitution to do, I more than doubt. . . .

But, in my judgment, this Treaty contains no stipulation in any manner affecting the action of the United States respecting the Territory in question. . . . In my opinion, this Treaty has no bearing on the present question.

For these reasons, I am of opinion that so much of the several Acts of Congress as prohibited slavery and involuntary servitude within that part of the Territory of Wisconsin lying north of thirty-six degrees thirty minutes north latitude, and west of the River Mississippi, were constitutional and valid laws. . . .

In my opinion, the judgment of the Circuit Court should be reversed, and the cause remanded for a new trial.

No. 114. Lecompton Constitution

November 7, 1857

A FREE State convention sitting at Topeka, in Kansas Territory, from Oct. 23 to Nov. 5, 1855, drew up a State constitution prohibiting slavery, which was submitted to the people Dec. 15, and adopted by a vote of 1,731 to 46, only free State men voting. A bill to admit Kansas under this constitution passed the House July 3, 1856, but failed in the Senate. A free State legislature, assuming to meet under the Topeka constitution, was dispersed by the United States troops, and a period of civil war in the Territory followed. September 5, 1857, a convention called by the proslavery legislature of the Territory met at Lecompton and drew up a constitution, which was submitted to the people for adoption "with slavery" or "without slavery." The free State men, who objected to having the Lecompton constitution on any terms, refrained from voting and Dec. 21 the constitution "with slavery" was adopted by a vote of 6,143, against 589 for the constitution "without slavery." In the meantime, however, the free State party had got control of the Territorial legislature, and Jan. 4, 1858, the constitution was rejected by a majority of more than 10,000. A bill to admit Kansas under the Lecompton constitution passed the Senate March 23, 1858, by a vote of 33 to 25. April 1 the House, by a vote of 120 to 112, substituted a bill resubmitting the constitution to popular vote. The two Houses then compromised on the "English bill" (act of May 4, 1858), "according to which a substitute for the land ordinance of the Lecompton constitution was to be submitted to

popular vote in Kansas; if it was accepted, the State was to be considered as admitted; if it was rejected, the Lecompton constitution was to be considered as rejected by the people, and no further constitutional convention was to be held until a census should have shown that the population of the Territory equalled or exceeded that required for a representative" (Johnston). August 3 the land ordinance was rejected by a vote of 11,088 to 1,788. The Wyandotte constitution, prohibiting slavery, was ratified by popular vote Oct. 4, 1859. Under this constitution Kansas was admitted to the Union Jan. 29, 1861.

The following extracts comprise the provisions of the Lecompton constitution relating to slavery, the status of negroes, and ratification.

REFERENCES. — *Text* in Poore's *Federal and State Constitutions*, I., 598–613, *passim*. For the struggle in Congress over the admission of Kansas, see the *House and Senate Journals*, 34th, 35th, and 36th Cong., and the *Cong. Globe*.

ARTICLE V.

SEC. 25. It shall be the duty of all civil officers of this State to use due diligence in the securing and rendition of persons held to service or labor in this State, either of the States or Territories of the United States; and the legislature shall enact such laws as may be necessary for the honest and faithful carrying out of this provision of the constitution.

ARTICLE VII.

SLAVERY.

SECTION 1. The right of property is before and higher than any constitutional sanction, and the right of the owner of a slave to such slave and its increase is the same, and as inviolable as the right of the owner of any property whatever.

SEC. 2. The legislature shall have no power to pass laws for the emancipation of slaves without the consent of the owners, or without paying the owners previous to their emancipation a full equivalent in money for the slaves so emancipated. They shall have no power to prevent emigrants to the State from bringing with them such persons as are deemed slaves by the laws of any one of the United States or Territories, so long as any person of the same age or description shall be continued in slavery by the laws of this State: *Provided*, That such person or slave be the *bona-fide* property of such emigrants: *And provided also*, That laws may be passed to prohibit the introduction into this State of

slaves who have committed high crimes in other States or Territories. They shall have power to pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a public charge. They shall have power to oblige the owners of slaves to treat them with humanity, to provide for them necessary food and clothing, to abstain from all injuries to them extending to life or limb, and, in case of their neglect or refusal to comply with the direction of such laws, to have such slave or slaves sold for the benefit of the owner or owners.

Sec. 3. In the prosecution of slaves for crimes of higher grade than petit larceny, the legislature shall have no power to deprive them of an impartial trial by a petit jury.

Sec. 4. Any person who shall maliciously dismember or deprive a slave of life shall suffer such punishment as would be inflicted in case the like offence had been committed on a free white person, and on the like proof, except in case of insurrection of such slave.

Bill of Rights.

23. Free negroes shall not be permitted to live in this State under any circumstances.

Schedule.

Sec. 7. This constitution shall be submitted to the Congress of the United States at its next ensuing session . . .

Before this constitution shall be sent to Congress, asking for admission into the Union as a State, it shall be submitted to all the white male inhabitants of this Territory, for approval or disapproval, as follows: . . . The voting shall be by ballot. The judges of said election shall cause to be kept two poll-books by two clerks, by them appointed. The ballots cast at said election shall be endorsed, "Constitution with slavery," and "Constitution with no slavery." . . . The president [of the convention] with two or more members of this convention, shall examine said poll-books, and if it shall appear upon said examination that a majority of the legal votes cast at said election be in favor of the "Constitution with slavery," he shall immediately have the same transmitted to the Congress of the United States, as hereinbefore

provided; but if, upon such examination of said poll-books, it shall appear that a majority of the legal votes cast at said election be in favor of the "Constitution with no slavery," then the article providing for slavery shall be stricken from this constitution by the president of this convention, and slavery shall no longer exist in the State of Kansas, except that the right of property in slaves now in this Territory shall in no manner be interferred with, and shall have transmitted the constitution, so ratified, (to Congress the constitution, so ratified,) to the Congress of the United States, as hereinbefore provided. . . .

No. 115. South Carolina Ordinance of Secession

December 20, 1860

It was clear that the success of the Republicans in the election of 1860 would mean the exclusion of slavery from the Territories. The legislature of South Carolina met Nov. 4 to choose presidential electors, and remained in session until it was known that Lincoln had been elected. On the 7th an act was passed calling a State convention, to meet at Columbia Dec. 17, to consider the question of withdrawing from the Union. The convention met at the time and place appointed, but adjourned to Charleston because of an epidemic of small-pox in Columbia. On the 20th an ordinance of secession was unanimously adopted by the one hundred and sixty-nine delegates present, and the president of the convention proclaimed South Carolina to be "an independent Commonwealth." On the 21st the Representatives of the State in Congress announced their withdrawal from the House. A "Declaration of the immediate causes which induce and justify the secession of South Carolina from the Federal Union" was adopted on the 24th.

References. — *Text* in *War of the Rebellion, Official Records*, Series I., vol. I., p. 110. For the proceedings of the convention, see *Amer. Annual Cyclopædia*, 1861, pp. 646–657; Moore's *Rebellion Record*, I., Doc. 2. The declaration of causes, and ordinances of secession passed by the other Southern States, are collected in *Amer. Hist. Leaflets*, No. 12. On the steps preliminary to secession, see Pike's *First Blows of the Civil War*. Buchanan defended his official conduct during 1860–61 in *The Administration on the Eve of the Rebellion* (London, 1865); a later defence is in Curtis's *Buchanan*, II., chap. 15.

An Ordinance to dissolve the union between the State of South Carolina and the other States united with her under the compact entitled "The Constitution of the United States of America":

We, the people of the State of South Carolina in convention assembled, do declare and ordain, and it is hereby declared and ordained, that the ordinance adopted by us in convention on . . . [May 23, 1788] . . . , whereby the Constitution of the United States of America was ratified, and also all acts and parts of acts of the general assembly of this State ratifying amendments of the said Constitution, are hereby repealed; and that the union now subsisting between South Carolina and other States, under the name of the "United States of America," is hereby dissolved.

No. 116. Constitution of the Confederate States of America

March 11, 1861

The secession of South Carolina was followed, Jan. 9, 1861, by similar action in Mississippi. Ordinances of secession were adopted by Florida Jan. 10, Alabama Jan. 11, Georgia Jan. 19, and Louisiana Jan. 26. A resolution of the legislature of Mississippi, Jan. 19, in favor of a congress of representatives from the seceded States to form a provisional government, was endorsed by the other States, and Feb. 8 a congress at Montgomery, Ala., adopted a provisional constitution. A permanent constitution was adopted March 11, and signed by delegates from each of the States above named, and by those of Texas, which had passed an ordinance of secession Feb. 1. The constitution was ratified by conventions in the several States. The first election under the permanent constitution was held Nov. 6, 1861. The congress under the permanent constitution met Feb. 18, 1862, superseding the provisional congress. The Confederate States of America were accorded belligerent rights by England and France through proclamations of neutrality, but were never formally recognized as a government, either by the United States or by any foreign power.

The permanent constitution was modelled after the Constitution of the United States, and is in the main a reproduction of that instrument, with verbal or minor changes necessary to adapt it to the style of the new confederacy. All the sections embodying other than verbal or formal changes are given in the extracts following, with references to facilitate comparison between the two documents.

References. — *Text* in *Conf. Stat. at Large* (Richmond, 1864, ed. Mat-

thews), 11–22, where is also the provisional constitution. A convenient reprint, with the texts of the Confederate constitution and the Constitution of the United States in parallel columns, is in Davis's *Confederate Government*, I., 648–673. The archives of the Confederate government are in the possession of the War Department. The official acts of the Confederacy are best followed in the *Journal* of the Congress (*Sen. Docs.*, 58th Cong., 2d Sess., vols. 25–31), and Richardson's *Messages and Papers of the Confederacy;* see also Moore's *Rebellion Record; Amer. Annual Cyclopædia*, 1861–65; McPherson's *Hist. of the Rebellion.*

We, the people of the Confederate States, each State acting in its sovereign and independent character, in order to form a permanent federal government, establish justice, insure domestic tranquillity, and secure the blessings of liberty to ourselves and our posterity — invoking the favor and guidance of Almighty God — do ordain and establish this Constitution for the Confederate States of America.[1]

Article I.

* * * * * * * *

SECTION 2.

1. The House of Representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each State shall be citizens of the Confederate States, and have the qualifications requisite for electors of the most numerous branch of the State Legislature; but no person of foreign birth, not a citizen of the Confederate States, shall be allowed to vote for any officer, civil or political, State or Federal.[2]

* * * * * * * *

3. Representatives and direct taxes shall be apportioned among the several States, which may be included within this Confederacy, according to their respective numbers, which shall be determined, by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all slaves. The actual enumeration shall be made within three years after the first meeting of the Congress

[1] [*Cf.* Const. U. S., Preamble.]
[2] [*Cf.* Const. U. S., Art. I., Sec. 2.]

of the Confederate States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every fifty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of South Carolina shall be entitled to choose six; the State of Georgia ten; the State of Alabama nine; the State of Florida two; the State of Mississippi seven; the State of Louisiana six; and the State of Texas six.[1]

* * * * * * * *

5. The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment; except that any judicial or other Federal officer, resident and acting solely within the limits of any State, may be impeached by a vote of two-thirds of both branches of the Legislature thereof.[2]

SECTION 3.

1. The Senate of the Confederate States shall be composed of two Senators from each State, chosen for six years by the Legislature thereof, at the regular session next immediately preceding the commencement of the term of service; and each Senator shall have one vote.[3]

* * * * * * * *

SECTION 6.

. . . No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the Confederate States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the Confederate States shall be a member of either House during his continuance in office. But Congress may, by law, grant to the principal officer in each of the Executive Departments a seat upon the floor of either House, with the privilege of discussing any measures appertaining to his department.[4]

[1] [*Cf.* Const. U. S., Art. I., Sec. 2, Par. 3.]
[2] [*Cf.* Const. U. S., Art. I., Sec. 2, Par. 5.]
[3] [*Cf.* Const. U. S., Art. I., Sec. 3, Par. 1.]
[4] [*Cf.* Const. U. S., Art. I., Sec. 6, Par. 2.]

SECTION 7.

2. . . . The President may approve any appropriation and disapprove any other appropriation in the same bill. In such case he shall, in signing the bill, designate the appropriations disapproved; and shall return a copy of such appropriations, with his objections, to the House in which the bill shall have originated; and the same proceedings shall then be had as in case of other bills disapproved by the President.[1]

SECTION 8.

The Congress shall have power —

1. To lay and collect taxes, duties, imposts, and excises, for revenue necessary to pay the debts, provide for the common defence, and carry on the government of the Confederate States; but no bounties shall be granted from the treasury; nor shall any duties or taxes on importations from foreign nations be laid to promote or foster any branch of industry; and all duties, imposts, and excises shall be uniform throughout the Confederate States:[2]

* * * * * * * *

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes; but neither this, nor any other clause contained in the Constitution, shall ever be construed to delegate the power to Congress to appropriate money for any internal improvement intended to facilitate commerce; except for the purpose of furnishing lights, beacons, and buoys, and other aids to navigation upon the coasts, and the improvement of harbors and the removing of obstructions in river navigation, in all which cases, such duties shall be laid on the navigation facilitated thereby, as may be necessary to pay the costs and expenses thereof:[3]

4. To establish uniform laws of naturalization, and uniform laws on the subject of bankruptcies, throughout the Confederate States; but no law of Congress shall discharge any debt contracted before the passage of the same:[4]

* * * * * * * *

[1] [*Cf.* Const. U. S., Art. I., Sec. 7, Par. 2.]
[2] [*Cf.* Const. U. S., Art. I., Sec. 8, Par. 1.]
[3] [*Cf.* Const. U. S., Art. I., Sec. 8, Par. 3.]
[4] [*Cf.* Const. U. S., Art. I., Sec. 8, Par. 4.]

7. To establish post-offices and post-routes; but the expenses of the Post-Office Department, after the first day of March in the year of our Lord eighteen hundred and sixty-three, shall be paid out of its own revenue:[1]

* * * * * * * *

SECTION 9.

1. The importation of negroes of the African race, from any foreign country other than the slaveholding States or Territories of the United States of America, is hereby forbidden; and Congress is required to pass such laws as shall effectually prevent the same.

2. Congress shall also have power to prohibit the introduction of slaves from any State not a member of, or Territory not belonging to, this Confederacy.[2]

* * * * * * * *

4. No bill of attainder, *ex post facto* law, or law denying or impa[i]ring the right of property in negro slaves shall be passed.[3]

* * * * * * * *

6. No tax or duty shall be laid on articles exported from any State, except by a vote of two-thirds of both Houses.[4]

* * * * * * * *

9. Congress shall appropriate no money from the treasury except by a vote of two-thirds of both Houses, taken by yeas and nays, unless it be asked and estimated for by some one of the heads of departments, and submitted to Congress by the President; or for the purpose of paying its own expenses and contingencies; or for the payment of claims against the Confederate States, the justice of which shall have been judicially declared by a tribunal for the investigation of claims against the government, which it is hereby made the duty of Congress to establish.

10. All bills appropriating money shall specify in federal currency the exact amount of each appropriation and the purposes for which it is made; and Congress shall grant no extra compen-

[1] [*Cf.* Const. U. S., Art. I., Sec. 8, Par. 7.]
[2] [*Cf.* Const. U. S., Art. I., Sec. 9, Par. 1.]
[3] [*Cf.* Const. U. S., Art. I., Sec. 9, Par. 3.]
[4] [*Cf.* Const. U. S., Art. I., Sec. 9, Par. 5.]

sation to any public contractor, officer, agent or servant, after such contract shall have been made or such service rendered.[1]

* * * * * * * *

20. Every law, or resolution having the force of law, shall relate to but one subject, and that shall be expressed in the title.

SECTION 10.

3. No State shall, without the consent of Congress, lay any duty on tonnage, except on sea-going vessels, for the improvement of its rivers and harbors navigated by the said vessels; but such duties shall not conflict with any treaties of the Confederate States with foreign nations; and any surplus revenue, thus derived, shall, after making such improvement, be paid into the common treasury. Nor shall any State keep troops or ships-of-war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay. But when any river divides or flows through two or more States, they may enter into compacts with each other to improve the navigation thereof.[2]

ARTICLE II.

SECTION 1.

1. The executive power shall be vested in a President of the Confederate States of America. He and the Vice President shall hold their offices for the term of six years; but the President shall not be re-eligible. . . .[3]

* * * * * * * *

7. No person except a natural born citizen of the Confederate States, or a citizen thereof at the time of the adoption of this Constitution, or a citizen thereof born in the United States prior to the 20th of December, 1860, shall be eligible to the office of President; neither shall any person be eligible to that office who

[1] [This and the preceding paragraphs are in addition to a provision identical with Const. U. S., Art. I., Sec. 9, Par. 7.]

[2] [*Cf.* Const. U. S., Art. I., Sec. 10, Par. 3.]

[3] [*Cf.* Const. U. S., Art. II., Sec. 1, Par. 1.]

shall not have attained the age of thirty-five years, and been fourteen years a resident within the limits of the Confederate States, as they may exist at the time of his election.[1]

* * * * * * * *

SECTION 2.

3. The principal officer in each of the executive departments, and all persons connected with the diplomatic service, may be removed from office at the pleasure of the President. All other civil officers of the executive departments may be removed at any time by the President, or other appointing power, when their services are unnecessary, or for dishonesty, incapacity, inefficiency, misconduct, or neglect of duty; and when so removed, the removal shall be reported to the Senate, together with the reasons therefor.

4. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session; but no person rejected by the Senate shall be re-appointed to the same office during their ensuing recess.[2]

* * * * * * * *

Article IV.

SECTION 2.

1. The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States; and shall have the right of transit and sojourn in any State of this Confederacy, with their slaves and other property; and the right of property in said slaves shall not be thereby impaired.[3]

2. A person charged in any State with treason, felony, or other crime against the laws of such State, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.[4]

[1] [*Cf.* Const. U. S., Art. II., Sec. 1, Par. 5.]
[2] [*Cf.* Const. U. S., Art. II., Sec. 2, Par. 3.]
[3] [*Cf.* Const. U. S., Art. IV., Sec. 2, Par. 1.]
[4] [*Cf.* Const. U. S., Art. IV., Sec. 2, Par. 2.]

3. No slave or other person held to service or labor in any State or Territory of the Confederate States, under the laws thereof, escaping or lawfully carried into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such slave belongs, or to whom such service or labor may be due.[1]

SECTION 3.

1. Other States may be admitted into this Confederacy by a vote of two-thirds of the whole House of Representatives and two-thirds of the Senate, the Senate voting by States; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned, as well as of the Congress.[2]

2. The Congress shall have power to dispose of and make all needful rules and regulations concerning the property of the Confederate States, including the lands thereof.[3]

3. The Confederate States may acquire new territory; and Congress shall have power to legislate and provide governments for the inhabitants of all territory belonging to the Confederate States, lying without the limits of the several States; and may permit them, at such times, and in such manner as it may by law provide, to form States to be admitted into the Confederacy. In all such territory, the institution of negro slavery, as it now exists in the Confederate States, shall be recognized and protected by Congress and by the territorial government: and the inhabitants of the several Confederate States and Territories shall have the right to take to such territory any slaves lawfully held by them in any of the States or Territories of the Confederate States.

ARTICLE V.

SECTION 1.

1. Upon the demand of any three States, legally assembled in their several conventions, the Congress shall summon a convention

[1] [*Cf.* Const. U. S., Art. IV., Sec. 2, Par. 3.]
[2] [*Cf.* Const. U. S., Art. IV., Sec. 3, Par. 1.]
[3] [*Cf.* Const. U. S., Art. IV., Sec. 3, Par. 2.]

of all the States, to take into consideration such amendments to the Constitution as the said States shall concur in suggesting at the time when the said demand is made; and should any of the proposed amendments to the Constitution be agreed on by the said convention — voting by States — and the same be ratified by the legislatures of two-thirds of the several States, or by conventions in two-thirds thereof — as the one or the other mode of ratification may be proposed by the general convention — they shall thenceforward form a part of this Constitution. But no State shall, without its consent, be deprived of its equal representation in the Senate.[1]

Article VI.

1. The Government established by this Constitution is the successor of the Provisional Government of the Confederate States of America, and all the laws passed by the latter shall continue in force until the same shall be repealed or modified: and all the officers appointed by the same shall remain in office until their successors are appointed and qualified, or the offices abolished.

* * * * * * * *

5. The enumeration, in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people of the Several States.[2]

6. The powers not delegated to the Confederate States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people thereof.[3]

Article VII.

1. The ratification of the conventions of five States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.[4]

2. When five States shall have ratified this Constitution, in the manner before specified, the Congress under the Provisional Constitution shall prescribe the time for holding the election of Presi-

[1] [*Cf.* Const. U. S., Art. V.]
[2] [*Cf.* Const. U. S., Amend., Art. IX.]
[3] [*Cf.* Const. U. S., Amend., Art. X.]
[4] [*Cf.* Const. U. S., Art. VII.]

dent and Vice President; and for the meeting of the Electoral College; and for counting the votes, and inaugurating the President. They shall, also, prescribe the time for holding the first election of members of Congress under this Constitution, and the time for assembling the same. Until the assembling of such Congress, the Congress under the Provisional Constitution shall continue to exercise the legislative powers granted them; not extending beyond the time limited by the Constitution of the Provisional Government.

No. 117. Call for 75,000 Volunteers

April 15, 1861

THE proclamation of April 15 was issued, under authority of the act of February 28, 1795, the day after the fall of Fort Sumter. The call on the governors of the States was made through the War Department. May 3 a further call for 42,034 volunteers to serve for three years, together with an order for the increase of the regular army and the enlistment of seamen, was issued, the action of the President being legalized by an act of August 6. An act of February 24, 1864, authorized the President to call whenever necessary for such number of volunteers as might be required.

REFERENCES. — *Text* in *U. S. Statutes at Large*, XII, 1258. Correspondence with the governors is in the *War Records*, Series III., Vol. I., pp. 68 *seq.* For comments of the press see Moore, *Rebellion Record*, I., 64–69 of documents.

WHEREAS the laws of the United States have been, for some time past, and now are opposed, and the execution thereof obstructed, in the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by law:

Now, therefore, I, ABRAHAM LINCOLN, President of the United States, in virtue of the power in me vested by the Constitution and the laws, have thought fit to call forth, and hereby do call forth, the militia of the several States of the Union, to the aggregate number of seventy-five thousand, in order to suppress said combinations, and to cause the laws to be duly executed.

The details for this object will be immediately communicated to the State authorities through the War Department.

I appeal to all loyal citizens to favor, facilitate, and aid this effort to maintain the honor, the integrity, and the existence of our National Union, and the perpetuity of popular government; and to redress wrongs already long enough endured.

I deem it proper to say that the first service assigned to the forces hereby called forth will probably be to repossess the forts, places, and property which have been seized from the Union; and in every event, the utmost care will be observed, consistently with the objects aforesaid, to avoid any devastation, any destruction of, or interference with, property, or any disturbance of peaceful citizens in any part of the country.

And I hereby command the persons composing the combinations aforesaid to disperse, and retire peaceably to their respective abodes within twenty days from this date.

Deeming that the present condition of public affairs presents an extraordinary occasion, I do hereby, in virtue of the power in me vested by the Constitution, convene both Houses of Congress. Senators and Representatives are therefore summoned to assemble at their respective chambers, at twelve o'clock, noon, on Thursday, the fourth day of July next, then and there to consider and determine such measures as, in their wisdom, the public safety and interest may seem to demand.

* * * * * * * *

No. 118. Proclamation declaring a Blockade of Southern Ports

April 19, 1861

In response to the proclamation of April 15, calling for 75,000 volunteers, Jefferson Davis, as president of the Confederate States, issued on April 17 a proclamation inviting applications for letters of marque and reprisal. The proclamation declaring a blockade of Southern ports was issued in rejoinder. By a further proclamation of April 27, the blockade was extended to the ports of Virignia and North Carolina.

References. — *Text* in *U.S. Statutes at Large*, XII., 1258, 1259. Davis's proclamation is in Moore, *Rebellion Record*, I., 71 of documents. The proclamation was upheld in the *Prize Cases*, 2 *Black*, 635.

Whereas an insurrection against the Government of the United

States has broken out in the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas, and the laws of the United States for the collection of the revenue cannot be effectually executed therein conformably to that provision of the Constitution which requires duties to be uniform throughout the United States:

And whereas a combination of persons, engaged in such insurrection, have threatened to grant pretended letters of marque to authorize the bearers thereof to commit assaults on the lives, vessels, and property of good citizens of the country lawfully engaged in commerce on the high seas, and in waters of the United States:

And whereas an Executive Proclamation has been already issued, requiring the persons engaged in these disorderly proceedings to desist therefrom, calling out a militia force for the purpose of repressing the same, and convening Congress in extraordinary session to deliberate and determine thereon:

Now, therefore, I, ABRAHAM LINCOLN, President of the United States, with a view to the same purposes before mentioned, and to the protection of the public peace, and the lives and property of quiet and orderly citizens pursuing their lawful occupations, until Congress shall have assembled and deliberated on the said unlawful proceedings, or until the same shall have ceased, have further deemed it advisable to set on foot a blockade of the ports within the States aforesaid, in pursuance of the laws of the United States and of the law of nations in such case provided. For this purpose a competent force will be posted so as to prevent entrance and exit of vessels from the ports aforesaid. If, therefore, with a view to violate such blockade, a vessel shall approach, or shall attempt to leave either of the said ports, she will be duly warned by the commander of one of the blockading vessels, who will indorse on her register the fact and date of such warning, and if the same vessel shall again attempt to enter or leave the blockaded port, she will be captured and sent to the nearest convenient port, for such proceedings against her and her cargo as prize, as may be deemed advisable.

And I hereby proclaim and declare that if any person, under the pretended authority of the said States, or under any other pretence, shall molest a vessel of the United States, or the persons or cargo on board of her, such person will be held amenable to the laws of the United States for the prevention and punishment of piracy.

No. 119. Act for a National Loan

July 17, 1861

In his message of July 4, 1861, Lincoln asked Congress for "at least" 400,000 men and $400,000,000 as "the legal means for making this contest a short and a decisive one." The Secretary of the Treasury, Chase, in his report of the same date, recommended loans to the aggregate amount of $250,000,000, and submitted the draft of a bill for that purpose. A bill to authorize a national loan was introduced in the House by Thaddeus Stevens of Pennsylvania, from the Committee of Ways and Means, July 9, and on the following day passed by a vote of 153 to 5. The Senate made a number of amendments, all of which were concurred in by the House, and on the 17th the act was approved. The act was amended by act of August 5.

References. — *Text* in *U.S. Statutes at Large*, XII., 259–261. For the proceedings see the *House and Senate Journals* and the *Cong. Globe*, 37th Cong., 1st Sess. Chase's report of July 4 is in the *Globe*, Appendix. On the condition of the treasury see *House Misc. Doc.* 20, 36th Cong., 2d Sess. The supplementary act of August 5 is in MacDonald, *Select Statutes*, No. 10.

An Act to authorize a National Loan and for other Purposes.

Be it enacted . . . , That the Secretary of the Treasury be, and he is hereby, authorized to borrow on the credit of the United States, within twelve months from the passage of this act, a sum not exceeding two hundred and fifty millions of dollars, or so much thereof as he may deem necessary for the public service, for which he is authorized to issue coupon bonds, or registered bonds, or treasury notes, in such proportions of each as he may deem advisable; the bonds to bear interest not exceeding seven per centum per annum, payable semi-annually, irredeemable for twenty years, and after that period redeemable at the pleasure of the United States; and the treasury notes to be of any denomination fixed by the Secretary of the Treasury, not less than fifty dollars, and to be payable three years after date, with interest at the rate of seven and three tenths per centum per annum, payable semi-annually. And the Secretary of the Treasury may also issue in exchange for coin, and as part of the above loan, or may pay for salaries or other dues from the United States, treasury notes of a less denomination than fifty dollars, not bearing interest, but payable on demand by the

Assistant Treasurers of the United States at Philadelphia, New York, or Boston, or treasury notes bearing interest at the rate of three and sixty-five hundredths per centum, payable in one year from date, and exchangeable at any time for treasury notes for fifty dollars, and upwards, issuable under the authority of this act, and bearing interest as specified above: *Provided*, That no exchange of such notes in any less amount than one hundred dollars shall be made at any one time: *And provided further*, That no treasury notes shall be issued of a less denomination than ten dollars, and that the whole amount of treasury notes, not bearing interest, issued under the authority of this act, shall not exceed fifty millions of dollars.

* * * * * * * *

SEC. 6. *And be it further enacted*, That whenever any treasury notes of a denomination less than fifty dollars, authorized to be issued by this act, shall have been redeemed, the Secretary of the Treasury may re-issue the same, or may cancel them and issue new notes to an equal amount: *Provided*, That the aggregate amount of bonds and treasury notes issued under the foregoing provisions of this act shall never exceed the full amount authorized by the first section of this act; and the power to issue, or re-issue such notes shall cease and determine after the thirty-first of December, eighteen hundred and sixty-two.

SEC. 7. *And be it further enacted*, That the Secretary of the Treasury is hereby authorized, whenever he shall deem it expedient, to issue in exchange for coin, or in payment for public dues, treasury notes of any of the denominations hereinbefore specified, bearing interest not exceeding six per centum per annum, and payable at any time not exceeding twelve months from date, provided that the amount of notes so issued, or paid, shall at no time exceed twenty millions of dollars.

* * * * * * * *

SEC. 9. *And be it further enacted*, That the faith of the United States is hereby solemnly pledged for the payment of the interest and redemption of the principal of the loan authorized by this act.

* * * * * * * *

No. 120. Act authorizing the Employment of Volunteers

July 22, 1861

A BILL to authorize the employment of volunteers, in accordance with the recommendation of President Lincoln in his message of July 4, 1861, was introduced in the Senate, July 6, by Henry Wilson of Massachusetts, and passed that house on the 10th by a vote of 34 to 4. On the 12th the action was reconsidered, and the bill with further amendments was again passed by a vote of 35 to 4. The passage of a substitute bill by the House caused a reference of the matter to a conference committee, whose report was agreed to by the two houses on the 18th. The discussion in each house had to do mainly with the details of organization of the volunteers provided for by the bill.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XII., 268–271. For the debates see the *House and Senate Journals* and *Cong. Globe*, 37th Cong., 1st Sess. On the efficiency of volunteers and the condition of the militia see *House Exec. Doc.* 54 and *House Report* 58, 36th Cong., 2d Sess., and *House Report* 1, 37th Cong., 1st Sess. A summary view of early military legislation, Union and Confederate, is given in McPherson, *History of the Rebellion*, 115–121.

An Act to authorize the Employment of Volunteers to aid in enforcing the Laws and protecting Public Property.

WHEREAS, certain of the forts, arsenals, custom-houses, navy yards, and other property of the United States have been seized, and other violations of law have been committed and are threatened by organized bodies of men in several of the States, and a conspiracy has been entered into to overthrow the Government of the United States: Therefore,

Be it enacted . . . , That the President be, and he is hereby, authorized to accept the services of volunteers, either as cavalry, infantry, or artillery, in such numbers, not exceeding five hundred thousand, as he may deem necessary, for the purpose of repelling invasion, suppressing insurrection, enforcing the laws, and preserving and protecting the public property: *Provided*, That the services of the volunteers shall be for such time as the President may direct, not exceeding three years nor less than six months,[1] and they shall be disbanded at the end of the war. . . .

[1] A supplementary act of July 25, 1861, provided that volunteers should "be mustered in for 'during the war.'" — ED.

SEC. 2. *And be it further enacted*, That the said volunteers shall be subject to the rules and regulations governing the army of the United States, and that they shall be formed, by the President, into regiments of infantry, with the exception of such numbers for cavalry and artillery, as he may direct, not to exceed the proportion of one company of each of those arms to every regiment of infantry, and to be organized as in the regular service. . . .

[The remainder of the act relates to the organization of the volunteers, the appointment of officers, etc.]

No. 121. Resolution on the Nature and Object of the War

July 22, 1861

A RESOLUTION declaratory of the nature and object of the war was offered in the House, July 22, 1861, by John J. Crittenden of Kentucky. In the vote the resolution was divided, the first part, through the word "capital," being adopted by a vote of 122 to 2, and the remainder by a vote of 117 to 2. A resolution in practically identical terms was offered in the Senate, July 24, by Andrew Johnson of Tennessee, and on the 25th, after a long discussion, was adopted, the vote being 30 to 5. The resolutions, which "gave expression to the common sentiment of the country," were the only formal declarations out of a great number submitted which passed the houses.

REFERENCES. — *Text* in *House Journal*, 37th Cong., 1st Sess., 123. For the debates see the *Cong. Globe*. A list of the principal declaratory resolutions submitted, with the action on each, is given in McPherson, *Rebellion*, 285–290.

Resolved . . . , That the present deplorable civil war has been forced upon the country by the disunionists of the southern States, now in arms against the constitutional government, and in arms around the capital ; that in this national emergency, Congress, banishing all feelings of mere passion or resentment, will recollect only its duty to the whole country ; that this war is not waged on their part in any spirit of oppression, or for any purpose of conquest or subjugation, or purpose of overthrowing or interfering with the rights or established institutions of those States, but to defend and maintain the *supremacy* of the Consti-

tution, and to preserve the Union with all the dignity, equality, and rights of the several States unimpaired; and that as soon as these objects are accomplished the war ought to cease.

No. 122. Act for Calling out the Militia

July 29, 1861

A BILL "to provide for the suppression of rebellion," etc., was introduced in the House, July 10, by John A. Bingham of Ohio, and on the 16th passed without a division. The bill passed the Senate on the 26th, and on the 29th the act was approved.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XII., 281, 282. For the proceedings see the *House and Senate Journals* and the *Cong. Globe*. The changes made by the act are set forth in the House proceedings of July 16; compare President Buchanan's remarks on the employment of the militia under the acts of 1795 and 1807, in his annual message of December 3, 1860.

An Act to provide for the Suppression of Rebellion against and Resistance to the Laws of the United States, and to amend the Act entitled "An Act to provide for calling forth the Militia to execute the Laws of the Union," &c., passed . . . [*February* 28, 1795].

Be it enacted . . . , That whenever, by reason of unlawful obstructions, combinations, or assemblages of persons, or rebellion against the authority of the Government of the United States, it shall become impracticable, in the judgment of the President of the United States, to enforce, by the ordinary course of judicial proceedings, the laws of the United States within any State or Territory of the United States, it shall be lawful for the President of the United States to call forth the militia of any or all the States of the Union, and to employ such parts of the land and naval forces of the United States as he may deem necessary to enforce the faithful execution of the laws of the United States, or to suppress such rebellion in whatever State or Territory thereof the laws of the United States may be forcibly opposed, or the execution thereof forcibly obstructed.

SEC. 2. *And be it further enacted*, That whenever, in the judgment of the President, it may be necessary to use the mili

tary force hereby directed to be employed and called forth by him, the President shall forthwith, by proclamation, command such insurgents to disperse and retire peaceably to their respective abodes, within a limited time.

Sec. 3. *And be it further enacted*, That the militia so called into the service of the United States shall be subject to the same rules and articles of war as the troops of the United States, and be continued in the service of the United States until discharged by proclamation of the President: *Provided*, That such continuance in service shall not extend beyond sixty days after the commencement of the next regular session of Congress, unless Congress shall expressly provide by law therefor: . . .

* * * * * * * *

Sec. 7. *And be it further enacted*, That the marshals of the several districts of the United States, and their deputies, shall have the same powers in executing the laws of the United States as sheriffs and their deputies in the several States, have by law, in executing the laws of the respective States.

* * * * * * * *

No. 123. Act to Define and Punish certain Conspiracies

July 31, 1861

A bill "to define and punish certain conspiracies" was presented in the House, July 15, by John Hickman of Pennsylvania, and passed by a vote of 123 to 7. In the Senate the printing of a minority report submitted by Bayard of Delaware and Powell of Kentucky was refused by a vote of 10 to 29, and on the 26th the bill in amended form passed the Senate. Nine Senators entered a protest against the bill. The amendment of the Senate was concurred in by the House on the 30th, and the next day the act was approved.

References. — *Text* in *U.S. Statutes at Large*, XII., 284. The important proceedings are those of the Senate for July 24 and 26 (*Cong. Globe*, 37th Cong., 1st Sess.).

An Act to define and punish certain Conspiracies.

Be it enacted . . . , That if two or more persons within any State or Territory of the United States shall conspire together

to overthrow, or to put down, or to destroy by force, the Government of the United States, or to levy war against the United States, or to oppose by force the authority of the Government of the United States; or by force to prevent, hinder, or delay the execution of any law of the United States; or by force to seize, take, or possess any property of the United States against the will or contrary to the authority of the United States; or by force, or intimidation, or threat to prevent any person from accepting or holding any office, or trust, or place of confidence, under the United States; each and every person so offending shall be guilty of a high crime, and upon conviction thereof in any district or circuit court of the United States, having jurisdiction thereof, or district or supreme court of any Territory of the United States having jurisdiction thereof, shall be punished by a fine not less than five hundred dollars and not more than five thousand dollars; or by imprisonment, with or without hard labor, as the court shall determine, for a period not less than six months nor greater than six years, or by both such fine and imprisonment.

No. 124. Confiscation Act

August 6, 1861

A BILL "to confiscate property used for insurrectionary purposes" was introduced in the Senate, July 15, by Lyman Trumbull of Illinois. When the bill was reported by the Committee on the Judiciary, on the 25th, Trumbull proposed an additional section, embodying in a shorter form the provisions of section four of the act. The amended bill passed the Senate July 22. The proposed forfeiture of the claims of owners to such of their slaves as had been compelled to work in aid of the rebellion aroused strong opposition in the House, but an amendment in the form of a substitute for the final section of the Senate bill, being section four of the act as passed, was agreed to, August 3, by a vote of 60 to 48. By a vote of 24 to 11 the Senate concurred in the amendment of the House, and on the 6th the act was approved. The Confiscation Act was the first legislative step towards emancipation.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XII., 319. For the proceedings see the *House and Senate Journals*, 37th Cong., 1st Sess., and the *Cong. Globe*. For the retaliatory act of the Confederate Congress, August 30, see *Confederate Statutes at Large*, 201. On Butler's course see *Butler's Book*, 256 *seq.*, and *War Records*, Series I., Vol. I., 53.

An Act to confiscate Property used for Insurrectionary Purposes.

Be it enacted . . . , That if, during the present or any future insurrection against the Government of the United States, after the President of the United States shall have declared, by proclamation, that the laws of the United States are opposed, and the execution thereof obstructed, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the power vested in the marshals by law, any person or persons, his, her, or their agent, attorney, or employé, shall purchase or acquire, sell or give, any property of whatsoever kind or description, with intent to use or employ the same, or suffer the same to be used or employed, in aiding, abetting, or promoting such insurrection or resistance to the laws, or any person or persons engaged therein; or if any person or persons, being the owner or owners of any such property, shall knowingly use or employ, or consent to the use or employment of the same as aforesaid, all such property is hereby declared to be lawful subject of prize and capture wherever found; and it shall be the duty of the President of the United States to cause the same to be seized, confiscated, and condemned.

Sec. 2. *And be it further enacted*, That such prizes and capture shall be condemned in the district or circuit court of the United States having jurisdiction of the amount, or in admiralty in any district in which the same may be seized, or into which they may be taken and proceedings first instituted.

Sec. 3. *And be it further enacted*, That the Attorney-General, or any district attorney of the United States in which said property may at the time be, may institute the proceedings of condemnation, and in such case they shall be wholly for the benefit of the United States ; or any person may file an information with such attorney, in which case the proceedings shall be for the use of such informer and the United States in equal parts.

Sec. 4. *And be it further enacted*, That whenever hereafter, during the present insurrection against the Government of the United States, any person claimed to be held to labor or service under the law of any State, shall be required or permitted by the person to whom such labor or service is claimed to be due, or by

the lawful agent of such person, to take up arms against the United States, or shall be required or permitted by the person to whom such labor or service is claimed to be due, or his lawful agent, to work or to be employed in or upon any fort, navy yard, dock, armory, ship, entrenchment, or in any military or naval service whatsoever, against the Government and lawful authority of the United States, then, and in every such case, the person to whom such labor or service is claimed to be due shall forfeit his claim to such labor, any law of the State or of the United States to the contrary notwithstanding. And whenever thereafter the person claiming such labor or service shall seek to enforce his claim, it shall be a full and sufficient answer to such claim that the person whose service or labor is claimed had been employed in hostile service against the Government of the United States, contrary to the provisions of this act.

No. 125. Act authorizing the Seizure of Railroad and Telegraph Lines

January 31, 1862

In his report of July 1, 1861, the Secretary of War, Cameron, stated that the resistance to the passage of troops through Baltimore, the destruction of bridges on certain railroads, and the refusal of the Baltimore and Ohio Railroad Company to transport government forces and supplies, had made it necessary "to take possession of so much of the railway lines as was required to form a connection with the States from which troops and supplies were expected;" and an appropriation for the construction and operation, when necessary, of railroad and telegraph lines was recommended. Further specific recommendations for construction were made in the annual report of December 1. A bill in accordance with the earlier recommendation was reported to the Senate, January 22, by Benjamin F. Wade of Ohio, from the Joint Committee on the Conduct of the War, and passed with amendments on the 28th by a vote of 23 to 12. The next day, by a vote of 113 to 28, the bill passed the House, and on the 31st the act was approved. An order taking military possession of all railroads was issued May 25.

References. — *Text* in *U.S. Statutes at Large*, XII., 334, 335. For the proceedings see the *House and Senate Journals*, 37th Cong., 2d Sess., and the *Cong. Globe*. The debate in the Senate is of most importance. Cameron's report of 1861 is in the *Globe*, Appendix.

An Act to authorize the President of the United States in certain Cases to take Possession of Railroad and Telegraph Lines, and for other Purposes.

Be it enacted . . . , That the President of the United States, when in his judgment the public safety may require it, be, and he is hereby authorized to take possession of any or all the telegraph lines in the United States, their offices and appurtenances; to take possession of any or all the railroad lines in the United States, their rolling-stock, their offices, shops, buildings, and all their appendages and appurtenances; to prescribe rules and regulations for the holding, using, and maintaining of the aforesaid telegraph and railroad lines, and to extend, repair, and complete the same,[1] in the manner most conducive to the safety and interest of the Government; to place under military control all the officers, agents, and employés belonging to the telegraph and railroad lines thus taken possession of by the President, so that they shall be considered as a post road and a part of the military establishment of the United States, subject to all the restrictions imposed by the rules and articles of war.

Sec. 2. *And be it further enacted*, That any attempt by any party or parties whomsoever, in any State or District in which the laws of the United States are opposed, or the execution thereof obstructed by insurgents and rebels against the United States, too powerful to be suppressed by the ordinary course of judicial proceedings, to resist or interfere with the unrestrained use by Government of the property described in the preceding section, or any attempt to injure or destroy the property aforesaid, shall be punished as a military offence, by death, or such other penalty as a court-martial may impose.

* * * * * * * *

Sec. 4. *And be it further enacted*, That the transportation of troops, munitions of war, equipments, military property and stores, throughout the United States, shall be under the immediate control and supervision of the Secretary of War and such agents as he may appoint; and all rules, regulations, articles, usages, and laws in conflict with this provision are hereby annulled.

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[1] By a joint resolution of July 14, 1862, so much of the act as authorized the construction, extension, or completion of any railroad was repealed. — Ed.

No. 126. Act authorizing the Issue of Legal Tender Notes

February 25, 1862

In his annual report of December 9, 1861, Secretary Chase stated that loans to the amount of $200,000,000 would be required to meet the estimated expenditures for the fiscal year ending June 30, 1862. He proposed the establishment of a national banking system, but did not recommend the further issue of treasury notes. December 28 the New York banks suspended specie payment. By a joint resolution of January 21, 1862, Congress announced its intention of raising $150,000,000 by taxes and duties. January 22 Elbridge G. Spaulding of New York reported to the House, from the Committee of Ways and Means, a bill to authorize the issue of legal tender notes, etc., being a substitute for a bill for the issue of $100,000,000 demand notes, but without the legal tender provision, reported by Spaulding January 7. The bill encountered strong opposition both in and out of Congress, but on February 6 it passed the House, with various amendments, by a vote of 93 to 59. On the 13th the Senate, by a vote of 17 to 22, rejected an amendment striking out the legal tender clause, and passed the bill with amendments by a vote of 30 to 7. The House refusing to concur in the amendments of the Senate, the bill went to a conference committee, whose report was accepted on the 24th by the House by a vote of 98 to 22, and by the Senate without a division. The next day, however, on the motion of Fessenden, the action of the Senate was reconsidered and a second conference asked for. The report of this committee was accepted by the houses, and on the 25th the act was approved. A further issue of legal tender notes, to the amount of $150,000,000, was authorized by an act of July 11, a third, to the amount of $100,000,000, by a joint resolution of January 17, 1863, and a fourth, of $150,000,000, March 3, 1863.

References. — *Text* in *U.S. Statutes at Large*, XII., 345–348. For the proceedings see the *House and Senate Journals*, 37th Cong., 2d Sess., and the *Cong. Globe*, where are also the texts of the numerous amendments offered. Morrill's substitute, embodying the recommendations of business men and bankers in consultation with Chase, and without the legal tender clause, is summarized in the *Globe* for February 4. On the constitutionality of the legal tender provision see *Hepburn v. Griswold*, 8 *Wallace*, 603; *Legal Tender Cases*, 12 *ibid.*, 457; *Juillard v. Greenman*, 110 *U.S. Reports*, 421.

An Act to authorize the Issue of United States Notes, and for the Redemption or Funding thereof, and for Funding the Floating Debt of the United States.

Be it enacted . . . , That the Secretary of the Treasury is hereby authorized to issue, on the credit of the United States,

one hundred and fifty millions of dollars of United States notes, not bearing interest, payable to bearer, at the Treasury of the United States, and of such denominations as he may deem expedient, not less than five dollars each: *Provided, however*, That fifty millions of said notes shall be in lieu of the demand Treasury notes authorized to be issued by the act of . . . [July 17, 1861] . . . ; which said demand notes shall be taken up as rapidly as practicable, and the notes herein provided for substituted for them: *And provided further*, That the amount of the two kinds of notes together shall at no time exceed the sum of one hundred and fifty millions of dollars, and such notes herein authorized shall be receivable in payment of all taxes, internal duties, excises, debts, and demands of every kind due to the United States, except duties on imports, and of all claims and demands against the United States of every kind whatsoever, except for interest upon bonds and notes, which shall be paid in coin, and shall also be lawful money and a legal tender in payment of all debts, public and private, within the United States, except duties on imports and interest as aforesaid. . . . And such United States notes shall be received the same as coin, at their par value, in payment for any loans that may be hereafter sold or negotiated by the Secretary of the Treasury, and may be re-issued from time to time as the exigencies of the public interests shall require.

SEC. 2. *And be it further enacted*, That to enable the Secretary of the Treasury to fund the Treasury notes and floating debt of the United States, he is hereby authorized to issue, on the credit of the United States, coupon bonds, or registered bonds, to an amount not exceeding five hundred millions of dollars, redeemable at the pleasure of the United States after five years, and payable twenty years from date, and bearing interest at the rate of six per centum per annum, payable semi-annually . . . ; and all stocks, bonds, and other securities of the United States held by individuals, corporations, or associations, within the United States, shall be exempt from taxation by or under State authority.

* * * * * * * *

SEC. 5. *And be it further enacted*, That all duties on imported goods shall be paid in coin, or in notes payable on demand heretofore authorized to be issued and by law receivable in pay-

ment of public dues, and the coin so paid shall be set apart as a special fund, and shall be applied as follows:

First. To the payment in coin of the interest on the bonds and notes of the United States.

Second. To the purchase or payment of one per centum of the entire debt of the United States, to be made within each fiscal year after . . . [July 1, 1862] . . . , which is to be set apart as a sinking fund, and the interest of which shall in like manner be applied to the purchase or payment of the public debt as the Secretary of the Treasury shall from time to time direct.

Third. The residue thereof to be paid into the Treasury of the United States.

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No. 127. Act for an Additional Article of War

March 13, 1862

July 9, 1861, the House of Representatives, by a vote of 92 to 55, resolved that "it is no part of the duty of the soldiers of the United States to capture and return fugitive slaves." December 23 the House Committee on Military Affairs was instructed to report a bill to make an additional article of war forbidding the use of the United States troops to return fugitives from service or labor. A bill to that effect was reported February 25, and passed, after much obstructive opposition, by a vote of 95 to 51. March 10, in the Senate, an amendment "that this article shall not apply in the States of Delaware, Maryland, Missouri, and Kentucky, nor elsewhere where the federal authority is recognized or can be enforced," was rejected, and the bill, by a vote of 29 to 9, passed.

References. — *Text* in *U.S. Statutes at Large*, XII., 354. For the debates see the *House and Senate Journals*, 37th Cong., 2d Sess., and the *Cong. Globe*. Various military orders and reports relating to the subject are collected in McPherson, *Rebellion*, 244 *seq.*

An Act to make an additional Article of War.

Be it enacted . . . , That hereafter the following shall be promulgated as an additional article of war for the government of the army of the United States, and shall be obeyed and observed as such:

Article —. All officers or persons in the military or naval service of the United States are prohibited from employing any of the forces under their respective commands for the purpose of returning fugitives from service or labor, who may have escaped from any persons to whom such service or labor is claimed to be due, and any officer who shall be found guilty by a court-martial of violating this article shall be dismissed from the service.

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No. 128. Joint Resolution on Compensated Emancipation

April 10, 1862

The first proposition for compensated emancipation seems to have been brought forward by James B. McKean of New York, who introduced in the House, February 11, 1861, a resolution for the appointment of a select committee to inquire into the practicability of emancipating the slaves in the border States. No action was taken on the resolution. In a special message to Congress, March 6, 1862, Lincoln recommended the adoption of a resolution in the identical terms of the resolution following. The resolution was introduced in the House, March 10, by Roscoe Conkling of New York, under suspension of the rules, and the next day passed by a vote of 97 to 36. The Senate passed the resolution April 2, the vote being 32 to 10. April 7, by a vote of 67 to 52, the House adopted a resolution, submitted by Albert S. White of Indiana, for the appointment of a select committee of nine on compensated emancipation in the border States. On March 10, and again on July 12, Lincoln had interviews with representatives of the border States, but the conferences were fruitless. In his proclamation of May 19, setting aside General Hunter's proclamation declaring free the slaves in Georgia, Florida, and South Carolina, Lincoln made an earnest plea for the acceptance of the offer proposed by the resolution; while in his annual message of December 1, 1862, he discussed the subject at length, and proposed an amendment to the Constitution to carry the plan into effect. Bills providing for compensated emancipation in Missouri and Maryland were introduced in the House in January, 1863, but failed to pass.

References. — *Text* in *U.S. Statutes at Large*, XII., 617. For the proceedings see the *House and Senate Journals*, 37th Cong., 1st Sess., and the *Cong. Globe*. Papers relating to Lincoln's interviews with representatives of the border States are in McPherson, *Rebellion*, 213–220. See also *Senate Report* 12 and *House Report* 148, 37th Cong., 2d Sess.; *House Report* 33, 39th Cong., 1st Sess.

Joint Resolution declaring that the United States ought to coöperate with, affording pecuniary Aid to any State which may adopt the gradual Abolishment of Slavery.

Be it resolved . . . , That the United States ought to coöperate with any State which may adopt gradual abolishment of slavery, giving to such State pecuniary aid, to be used by such State in its discretion, to compensate for the inconveniences, public and private, produced by such change of system.

No. 129. Act abolishing Slavery in the District of Columbia

April 16, 1862

A BILL "for the release of certain persons held to service or labor in the District of Columbia" was introduced in the Senate, December 16, 1861, by Henry Wilson of Massachusetts. The debate on the bill began March 12 and developed much opposition, but April 3, by a vote of 29 to 14, the bill passed. In the House a motion to reject the bill was lost, 45 to 93, and on the 11th the bill passed, the final vote being 85 to 40. In his message of approval Lincoln suggested that further time be allowed for the presentation of claims, and that provision be made for "minors, *femmes covert*, insane, or absent persons"; and a supplementary act was passed July 12 embodying these changes. The civil appropriation act of July 16 made an appropriation of $500,000 for the removal and colonization of the emancipated negroes, but this, as to the unexpended balance, together with section eleven of the act of April 16, was repealed by the civil appropriation act of July 2, 1864. Acts of May 20 and 21 provided for the education of colored children in the District.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XII., 376–378. For the proceedings see the *House and Senate Journals*, 37th Cong., 2d Sess., and the *Cong. Globe*. Calvert's minority report, March 12, is *House Report* 58. For a report of the commissioners see *House Exec. Doc.* 42, 38th Cong., 1st Sess.

An Act for the Release of certain Persons held to Service or Labor in the District of Columbia.

Be it enacted . . . , That all persons held to service or labor within the District of Columbia by reason of African descent are hereby discharged and freed of and from all claim to such service

or labor; and from and after the passage of this act neither slavery nor involuntary servitude, except for crime, whereof the party shall be duly convicted, shall hereafter exist in said District.

SEC. 2. *And be it further enacted*, That all persons loyal to the United States, holding claims to service or labor against persons discharged therefrom by this act, may, within ninety days from the passage thereof, but not thereafter, present to the commissioners hereinafter mentioned their respective statements or petitions in writing, verified by oath or affirmation, setting forth the names, ages, and personal description of such persons, the manner in which said petitioners acquired such claim, and any facts touching the value thereof, and declaring his allegiance to the Government of the United States, and that he has not borne arms against the United States during the present rebellion, nor in any way given aid or comfort thereto: *Provided*, That the oath of the party to the petition shall not be evidence of the facts therein stated.

SEC. 3. *And be it further enacted*, That the President of the United States, with the advice and consent of the Senate, shall appoint three commissioners, residents of the District of Columbia, . . . who shall receive the petitions above mentioned, and who shall investigate and determine the validity and value of the claims therein presented, as aforesaid, and appraise and apportion, under the proviso hereto annexed, the value in money of the several claims by them found to be valid: *Provided, however*, That the entire sum so appraised and apportioned shall not exceed in the aggregate an amount equal to three hundred dollars for each person shown to have been so held by lawful claim: *And provided, further*, That no claim shall be allowed for any slave or slaves brought into said District after the passage of this act, nor for any slave claimed by any person who has borne arms against the Government of the United States in the present rebellion, or in any way given aid or comfort thereto, or which originates in or by virtue of any transfer heretofore made, or which shall hereafter be made by any person who has in any manner aided or sustained the rebellion against the Government of the United States.

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No. 130. Abolition of Slavery in the Territories

June 19, 1862

MARCH 24, 1862, Isaac N. Arnold of Illinois introduced in the House a bill "to render freedom national and slavery sectional." Another bill with a similar title was introduced May 1 by Owen Lovejoy of Illinois. The latter bill, with amended title, was reported May 8 as a substitute for the Arnold bill, and on the 12th passed the House by a vote of 85 to 50. The Senate, June 9, amended the House bill by substituting the text of the act as passed, the vote being 28 to 10. On the 17th the House concurred in the Senate amendment, and on the 19th the act was approved. The prohibition of the act was incorporated in the later acts organizing the Territories of Arizona and Idaho.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XII., 432. For the proceedings see the *House and Senate Journals*, 37th Cong., 2d Sess., and the *Cong. Globe*.

An Act to secure Freedom to all Persons within the Territories of the United States.

Be it enacted . . . , That from and after the passage of this act there shall be neither slavery nor involuntary servitude in any of the Territories of the United States now existing, or which may at any time hereafter be formed or acquired by the United States, otherwise than in punishment of crimes whereof the party shall have been duly convicted.

No. 131. Oath of Office

July 2, 1862

BY an act of August 6, 1861, all members of the civil departments of the government were required to take an oath of allegiance to the United States "against all enemies, domestic or foreign, . . . any ordinance, resolution, or law of any State convention or legislature to the contrary notwithstanding." An act of May 20, 1862, required voters in Washington and Georgetown, if challenged for disloyalty, to take a similar oath, with the addition of a clause declaring that the subscriber had "always been loyal and true to the Government of the United States." An act of June 17 imposed upon grand and

petit jurors in United States courts an oath declaring "that you have not without duress and constraint, taken up arms, or joined any insurrection or rebellion against the United States; that you have not adhered to any insurrection or rebellion, giving it aid and comfort; that you have not, directly or indirectly, given any assistance in money, or any other thing, to any person or persons whom you knew, or had good ground to believe, had joined, or was about to join, said insurrection and rebellion, or had resisted, or was about to resist, with force of arms, the execution of the laws of the United States; and that you have not counselled or advised any person or persons to join any rebellion against, or to resist with force of arms, the laws of the United States." The so-called "iron-clad" oath of July 2 had its origin in a bill introduced in the House, March 24, by James F. Wilson of Iowa, "declaring certain persons ineligible to office." June 4 a substitute reported by the Committee on Judiciary, being a modified form of an amendment previously offered by Horace Maynard of Tennessee to a bill to free the slaves of rebels, was agreed to, and the bill passed, the vote being 78 to 47. The Senate, on motion of Garrett Davis of Kentucky, added an amendment excepting the Vice-President and Senators and Representatives, the amended bill passing the Senate on the 23d by a vote of 33 to 5. The House disagreeing, the Senate receded from so much of its amendment as excepted Senators and Representatives, and in this form the bill passed. The acts of June 17 and July 2 were repealed by an act of May 13, 1884.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XII., 502, 503. For the proceedings see the *House and Senate Journals*, 37th Cong., 2d Sess., and the *Cong. Globe*. On the loyalty of government employees see *House Report* 16, 37th Cong., 2d Sess. On the modification of the oath see *House Exec. Doc.* 81, 39th Cong., 1st Sess., *House Report*, 51, *ibid.*, *Senate Exec. Doc.* 38, *ibid.*, and No. 159, *post*.

An Act to prescribe an Oath of Office, and for other Purposes.

Be it enacted . . . , That hereafter every person elected or appointed to any office of honor or profit under the government of the United States, either in the civil, military or naval departments of the public service, excepting the President of the United States, shall, before entering upon the duties of such office, and before being entitled to any of the salary or other emoluments thereof, take and subscribe the following oath or affirmation: "I, A. B., do solemnly swear (or affirm) that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought nor accepted nor attempted to exercise the functions of any office whatever, under any author-

ity or pretended authority in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power or constitution within the United States, hostile or inimical thereto. And I do further swear (or affirm) that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God;" . . .

No. 132. Confiscation Act

July 17, 1862

A BILL "to confiscate the property of rebels for the payment of the expenses of the present rebellion" was reported in the House, May 14, 1862, by Thomas D. Eliot of Massachusetts, from the select committee on the confiscation of rebel property, together with a bill to free the slaves of rebels. On the 26th a substitute for the two bills, offered by Morrill of Vermont on the 20th, was rejected by a vote of 25 to 122, and the bill passed, the vote being 82 to 68. The House bill was more stringent than the act finally passed, but a substitute agreed to by the Senate, June 28, by a vote of 28 to 13, was thought by the House too lenient, and by a vote of 8 to 123 the amendment of the Senate was disagreed to. The report of the conference committee, being the Senate substitute with amendments, was agreed to by the House, July 11, by a vote of 82 to 42, and by the Senate, July 12, by a vote of 28 to 13. President Lincoln had intended to veto the bill on the ground that under it offenders would be forever divested of title to their real estate, and punishment would thus be made to extend beyond the life of the guilty party. To obviate this objection, a joint resolution explanatory of the act was hurried through both houses July 17. Lincoln, in communicating to Congress his approval of the act and the resolution, transmitted also the veto message which he had already prepared. A proclamation under section 6 of the act was issued the same day that the act as approved, and December 8, 1863, a proclamation of amnesty [No. 137] under section 13. The latter section was repealed, with the purpose of restricting the pardoning power of the President, July 17, 1867.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XII., 589–592. For the proceedings see the *House and Senate Journals*, 37th Cong., 2d Sess., and the *Cong. Globe*. The texts of all amendments and substitutes are in the *Globe*. The debates called out numerous formal speeches. On the seizure of lands

under the act see a report by O. O. Howard, *House Exec. Doc.* 19, 39th Cong. 1st Sess.; see also *Senate Exec. Doc.* 58, 40th Cong., 2d Sess.

An Act to suppress Insurrection, to punish Treason and Rebellion, to seize and confiscate the Property of Rebels, and for other Purposes.

Be it enacted . . . , That every person who shall hereafter commit the crime of treason against the United States, and shall be adjudged guilty thereof, shall suffer death, and all his slaves, if any, shall be declared and made free; or, at the discretion of the court, he shall be imprisoned for not less than five years and fined not less than ten thousand dollars, and all his slaves, if any, shall be declared and made free; . . .

SEC. 2. *And be it further enacted*, That if any person shall hereafter incite, set on foot, assist, or engage in any rebellion or insurrection against the authority of the United States, or the laws thereof, or shall give aid or comfort thereto, or shall engage in, or give aid and comfort to, any such existing rebellion or insurrection, and be convicted thereof, such person shall be punished by imprisonment for a period not exceeding ten years, or by a fine not exceeding ten thousand dollars, and by the liberation of all his slaves, if any he have; or by both of said punishments, at the discretion of the court.

SEC. 3. *And be it further enacted*, That every person guilty of either of the offences described in this act shall be forever incapable and disqualified to hold any office under the United States.

* * * * * * * *

SEC. 5. *And be it further enacted*, That, to insure the speedy termination of the present rebellion, it shall be the duty of the President of the United States to cause the seizure of all the estate and property, money, stocks, credits, and effects of the persons hereinafter named in this section, and to apply and use the same and the proceeds thereof for the support of the army of the United States, that is to say:

First. Of any person hereafter acting as an officer of the army or navy of the rebels in arms against the government of the United States.

Secondly. Of any person hereafter acting as President, Vice-President, member of Congress, judge of any court, cabinet officer

foreign minister, commissioner or consul of the so-called confederate states of America.

Thirdly. Of any person acting as governor of a state, member of a convention or legislature, or judge of any court of any of the so-called confederate states of America.[1]

Fourthly. Of any person who, having held an office of honor, trust, or profit in the United States, shall hereafter hold an office in the so-called confederate states of America.

Fifthly. Of any person hereafter holding any office or agency under the government of the so-called confederate states of America, or under any of the several states of the said confederacy, or the laws thereof, whether such office or agency be national, state, or municipal in its name or character: *Provided*, That the persons, thirdly, fourthly, and fifthly above described shall have accepted their appointment or election since the date of the pretended ordinance of cecession of the state, or shall have taken an oath of allegiance to, or to support the constitution of the so-called confederate states.

Sixthly. Of any person who, owning property in any loyal State or Territory of the United States, or in the District of Columbia, shall hereafter assist and give aid and comfort to such rebellion; . . .

* * * * * * * *

Sec. 9. *And be it further enacted*, That all slaves of persons who shall hereafter be engaged in rebellion against the government of the United States, or who shall in any way give aid or comfort thereto, escaping from such persons and taking refuge within the lines of the army; and all slaves captured from such persons or deserted by them and coming under the control of the government of the United States; and all slaves of such persons found *on* [or] being within any place occupied by rebel forces and afterwards occupied by the forces of the United States, shall be deemed captives of war, and shall be forever free of their servitude, and not again held as slaves.

Sec. 10. *And be it further enacted*, That no slave escaping into any State, Territory, or the District of Columbia, from any other State, shall be delivered up, or in any way impeded or hindered of his liberty, except for crime, or some offence against the laws,

[1] See joint resolution of July 17 (*U. S. Stat. at Large*, XII., 627). — Ed.

unless the person claiming said fugitive shall first make oath that the person to whom the labor or service of such fugitive is alleged to be due is his lawful owner, and has not borne arms against the United States in the present rebellion, nor in any way given aid and comfort thereto; and no person engaged in the military or naval service of the United States shall, under any pretence whatever, assume to decide on the validity of the claim of any person to the service or labor of any other person, or surrender up any such person to the claimant, on pain of being dismissed from the service.

SEC. 11. *And be it further enacted*, That the President of the United States is authorized to employ as many persons of African descent as he may deem necessary and proper for the suppression of this rebellion, and for this purpose he may organize and use them in such manner as he may judge best for the public welfare.

* * * * * * * *

No. 133. Emancipation Proclamation

January 1, 1863

A DRAFT of an emancipation proclamation was read to the Cabinet by Lincoln July 22, 1862, but at Seward's suggestion the paper was laid aside until an important Union victory should have been won. The desired victory came at Antietam, September 16–17. A preliminary proclamation was issued September 22, and the definitive one January 1, 1863. December 15, in the House, a resolution declaring that the proclamation of September 22 "is warranted by the Constitution," and that the policy of emancipation "was well chosen as a war measure, and is an exercise of power with proper regard for the rights of the States and the perpetuity of free government," was adopted by a vote of 78 to 51.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XII., 1268, 1269. Various resolutions submitted in the House and Senate are collected in McPherson, *Rebellion*, 209–233; on Fremont's proclamation of August 31, 1861, see *ibid.*, 245–247. See also *House Exec. Doc.* 72, 37th Cong., 3d Sess.

WHEREAS, on . . . [September 22, 1862] . . . , a proclamation was issued by the President of the United States, containing, among other things, the following, to wit:

"That on . . . [January 1, 1863] . . . , all persons held as

slaves within any state or designated part of a state, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever, free; and the Executive Government of the United States, including the military and naval authority thereof, will recognize and maintain the freedom of such persons, and will do no act or acts to repress such persons, or any of them, in any efforts they may make for their actual freedom.

"That the Executive will, on the first day of January aforesaid, by proclamation, designate the states and parts of states, if any, in which the people thereof, respectively, shall then be in rebellion against the United States; and the fact that any state, or the people thereof, shall on that day be in good faith represented in the Congress of the United States, by members chosen thereto at elections wherein a majority of the qualified voters of such states shall have participated, shall, in the absence of strong countervailing testimony, be deemed conclusive evidence that such state, and the people thereof, are not then in rebellion against the United States."

Now, therefore, I, Abraham Lincoln, President of the United States, by virtue of the power in me vested as commander-in-chief of the army and navy of the United States, in time of actual armed rebellion against the authority and Government of the United States, and as a fit and necessary war measure for suppressing said rebellion, do, on this first day of January, . . . [1863] . . . , and in accordance with my purpose so to do, publicly proclaimed for the full period of one hundred days from the day first above mentioned, order and designate as the states and parts of states wherein the people thereof, respectively, are this day in rebellion against the United States, the following, to wit:

Arkansas, Texas, Louisiana, (except the parishes of St. Bernard, Plaquemines, Jefferson, St. John, St. Charles, St. James, Ascension, Assumption, Terre Bonne, Lafourche, St. Mary, St. Martin, and Orleans, including the city of New Orleans,) Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, and Virginia, (except the forty-eight counties designated as West Virginia, and also the counties of Berkeley, Accomac, Northampton, Elizabeth City, York, Princess Ann, and Norfolk, including the cities of Norfolk and Portsmouth,) and which

excepted parts are for the present left precisely as if this proclamation were not issued.

And by virtue of the power and for the purpose aforesaid, I do order and declare that all persons held as slaves within said designated states and parts of states are, and henceforward shall be, free; and that the Executive Government of the United States, including the military and naval authorities thereof, will recognize and maintain the freedom of said persons.

And I hereby enjoin upon the people so declared to be free to abstain from all violence, unless in necessary self-defence; and I recommend to them that, in all cases when allowed, they labor faithfully for reasonable wages.

And I further declare and make known that such persons, of suitable condition, will be received into the armed service of the United States to garrison forts, positions, stations, and other places, and to man vessels of all sorts in said service.

And upon this act, sincerely believed to be an act of justice, warranted by the Constitution upon military necessity, I invoke the considerate judgment of mankind and the gracious favor of Almighty God.

* * * * * * * *

No. 134. Enrolment Act

March 3, 1863

AUGUST 4, 1862, Lincoln ordered a draft of 300,000 men. Four days later it was ordered that no citizen liable to be drafted should be allowed to go to a foreign country. The draft was completed early in September. A bill to provide for enrolling and calling out the national forces was reported in the Senate, February 9, 1863, by Wilson of Massachusetts, from the Committee on Military Affairs and Militia, to whom the subject had been referred, and on the 16th passed without a division. In the House a motion to limit the enrolment to white citizens was lost by a vote of 53 to 85; an attempt to strike out the $300 commutation clause also failed, the vote being 67 to 87. February 25 the bill passed the House. The Senate concurred in the House amendments, and March 3 the act was approved. A proclamation under section twenty-six of the act was issued March 10, followed May 8 by a proclamation relative to the status of aliens under the act.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XII., 731–737. For the

proceedings see the *House and Senate Journals*, 37th Cong., 3d Sess., and the *Cong. Globe*. A summary of the bill as reported in the Senate is in the *Globe*, February 16. The executive orders of August 4 and 8, 1862, are in Richardson, *Messages and Papers of the Presidents*, VI., 120–121. On the enforcement of the act see the annual report of the Secretary of War, 1863.

An Act for enrolling and calling out the national Forces, and for other Purposes.

WHEREAS there now exist in the United States an insurrection and rebellion against the authority thereof, and it is, under the Constitution of the United States, the duty of the government to suppress insurrection and rebellion, to guarantee to each State a republican form of government, and to preserve the public tranquillity; and whereas, for these high purposes, a military force is indispensable, to raise and support which all persons ought willingly to contribute; and whereas no service can be more praiseworthy and honorable than that which is rendered for the maintenance of the Constitution and Union, and the consequent preservation of free government: Therefore —

Be it enacted . . . , That all able-bodied male citizens of the United States, and persons of foreign birth who shall have declared on oath their intention to become citizens under and in pursuance of the laws thereof, between the ages of twenty and forty-five years, except as hereinafter excepted, are hereby declared to constitute the national forces, and shall be liable to perform military duty in the service of the United States when called out by the President for that purpose.

SEC. 2. *And be it further enacted*, That the following persons be, and they are hereby, excepted and exempt from the provisions of this act, and shall not be liable to military duty under the same, to wit: Such as are rejected as physically or mentally unfit for the service; also, First the Vice-President of the United States, the judges of the various courts of the United States, the heads of the various executive departments of the government, and the governors of the several States. Second, the only son liable to military duty of a widow dependent upon his labor for support. Third, the only son of aged or infirm parent or parents dependent upon his labor for support. Fourth, where there are two or more sons of aged or infirm parents subject to draft, the

father, or, if he be dead, the mother, may elect which son shall be exempt. Fifth, the only brother of children not twelve years old, having neither father nor mother dependent upon his labor for support. Sixth, the father of motherless children under twelve years of age dependent upon his labor for support. Seventh, where there are a father and sons in the same family and household, and two of them are in the military service of the United States as non-commissioned officers, musicians, or privates, the residue of such family and household, not exceeding two, shall be exempt. And no persons but such as are herein excepted shall be exempt: *Provided, however*, That no person who has been convicted of any felony shall be enrolled or permitted to serve in said forces.

Sec. 3. *And be it further enacted*, That the national forces of the United States not now in the military service, enrolled under this act, shall be divided into two classes: the first of which shall comprise all persons subject to do military duty between the ages of twenty and thirty-five years, and all unmarried persons subject to do military duty above the age of thirty-five and under the age of forty-five; the second class shall comprise all other persons subject to do military duty, and they shall not, in any district, be called into the service of the United States until those of the first class shall have been called.[1]

Sec. 4. *And be it further enacted*, That, for greater convenience in enrolling, calling out, and organizing the national forces, and for the arrest of deserters and spies of the enemy, the United States shall be divided into districts, of which the District of Columbia shall constitute one, each territory of the United States shall constitute one or more, as the President shall direct, and each congressional district of the respective states, as fixed by a law of the state next preceding the enrolment, shall constitute one: . . .

Sec. 5. *And be it further enacted*, That for each of said districts there shall be appointed by the President a provost-marshal, . . . who shall be under the direction and subject to the orders of a provost-marshal-general, . . . whose office shall be at the seat of government, forming a separate bureau of the War Department. . . .

[1] See act of February 24, 1864, section 11. — Ed.

[Sections 6 and 7. Duties of provost-marshal-general and provost marshals.]

SEC. 8. *And be it further enacted*, That in each of said districts there shall be a board of enrolment, to be composed of the provost-marshal, as president, and two other persons, to be appointed by the President of the United States, one of whom shall be a licensed and practising physician and surgeon.

SEC. 9. *And be it further enacted*, That it shall be the duty of the said board to divide the district into sub-districts of convenient size, if they shall deem it necessary, not exceeding two, without the direction of the Secretary of War, and to appoint, on or before the tenth day of March next, and in each alternate year thereafter, an enrolling officer for each sub-district, and to furnish him with proper blanks and instructions; and he shall immediately proceed to enrol all persons subject to military duty, noting their respective places of residence, ages on the first day of July following, and their occupation, and shall, on or before the first day of April, report the same to the board of enrolment, to be consolidated into one list, a copy of which shall be transmitted to the provost-marshal-general on or before the first day of May succeeding the enrolment: . . .

* * * * * * * *

SEC. 11. *And be it further enacted*, That all persons thus enrolled shall be subject, for two years after the first day of July succeeding the enrolment, to be called into the military service of the United States, and to continue in service during the present rebellion, not, however, exceeding the term of three years. . . .

SEC. 12. *And be it further enacted*, That whenever it may be necessary to call out the national forces for military service, the President is hereby authorized to assign to each district the number of men to be furnished by said district; and thereupon the enrolling board shall, under the direction of the President, make a draft of the required number, and fifty per cent. in addition. . . .

SEC. 13. *And be it further enacted*, That any person drafted and notified to appear as aforesaid, may, on or before the day fixed for his appearance, furnish an acceptable substitute to take his place in the draft; or he may pay to such person as the Secretary of War may authorize to receive it, such sum, not exceeding three hundred dollars, as the Secretary may determine

for the procuration of each substitute; . . . And any person failing to report after due service of notice, as herein prescribed, without furnishing a substitute, or paying the required sum therefor, shall be deemed a deserter . . .

* * * * * * * *

SEC. 25. *And be it further enacted*, That if any person shall resist any draft of men enrolled under this act into the service of the United States, or shall counsel or aid any person to resist any such draft; or shall assault or obstruct any officer in making such draft, or in the performance of any service in relation thereto; or shall counsel any person to assault or obstruct any such officer, or shall counsel any drafted men not to appear at the place of rendezvous, or wilfully dissuade them from the performance of military duty as required by law, such person shall be subject to summary arrest by the provost-marshal, and shall be forthwith delivered to the civil authorities, and, upon conviction thereof, be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding two years, or by both of said punishments.

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No. 135. Act relating to Habeas Corpus

March 3, 1863

APRIL 27, 1861, Lincoln by executive order authorized General Scott, in his discretion, to suspend the privilege of the writ of *habeas corpus* on any military line between Philadelphia and Washington. July 2 this authorization was extended to the military line between New York and Washington. A proclamation of May 10 authorized suspension in the islands of Key West, the Tortugas, and Santa Rosa. Doubt as to the legality of these executive orders, however, reënforced by public criticism of the numerous arrests of civilians in pursuance of them, led to the issue, February 14, 1862, of an order directing the release of political prisoners held in military custody, "on their subscribing to a parole engaging them to render no aid or comfort to the enemies in hostility to the United States"; but a proclamation of September 24 declared all disloyal persons subject to martial law, and suspended the privilege of the writ as to such persons. An act of August 6, 1861, had in the meantime validated all the acts, proclamations, and orders of the President, relating to military affairs, issued since the 4th of March preceding. A bill

"to indemnify the President and other persons for suspending the privilege of the writ of *habeas corpus*, and acts done in pursuance thereof," was introduced in the House, December 8, 1862, by Thaddeus Stevens, and passed the same day, notwithstanding strong opposition, by a vote of 91 to 46. On the 22d a protest against the bill, signed by thirty-six members of the House, was, by a vote of 75 to 40, refused entry on the journal. The bill was reported with amendments in the Senate January 15, 1863, and passed that body on the 27th, after long discussion, by a vote of 33 to 7. The House, by a vote of 35 to 114, refused to agree to the Senate amendments, and the bill received its final form from a conference committee, the Senate receding from its amendments and accepting a modified form of the House bill. A proclamation of September 15, under the act, declared a general suspension of the privilege of the writ throughout the United States; this was revoked as to the loyal States December 1, 1865. An amendatory act was passed May 11, 1866. An act of March 2, 1867, validated all acts, proclamations, and orders of the President respecting martial law, &c., after March 4, 1861, and before July 1, 1866.

References. — *Text* in *U.S. Statutes at Large*, XII., 755–758. For the proceedings see the *House and Senate Journals*, 37th Cong., 3d Sess., and the *Cong. Globe*. The Pendleton protest is in the *Globe*, December 22; the Senate amendments, *ibid.*, February 19, House proceedings. Numerous orders, reports, letters, etc., are collected in McPherson, *Rebellion*, 152–194; see also *House Exec. Doc.* 6, 37th Cong., 1st Sess., and *Senate Exec. Doc.* 11, 37th Cong., 3d Sess. For Taney's opinion, 1861, against the right of the President to suspend, see *Ex parte Merryman*, Taney's Reports, 246; cf. Tyler, *Taney*, chap. 6. The opinion of Bates affirming the right is in *House Exec. Doc.* 5, 37th Cong., 1st Sess. Cf. *Ex parte Milligan* (1866), 4 *Wallace*, 2, and Garfield's argument, *Works*, I., 158; *Vallandigham's Case*, 1 *Wallace*, 243. On Lincoln's proclamation of September 24, 1862, see Curtis, *Constitutional History*, II., 668–686. The act of indemnity of March 2, 1867, is in MacDonald's *Select Statutes*, No. 58. See also Thayer, *Cases on Constitutional Law*, 2374, 2375; reports of the Provost Marshal General; Whiting, *War Powers*.

An Act relating to Habeas Corpus, and regulating Judicial Proceedings in Certain Cases.

Be it enacted . . . , That, during the present rebellion, the President of the United States, whenever, in his judgment, the public safety may require it, is authorized to suspend the privilege of the writ of habeas corpus in any case throughout the United States, or any part thereof. And whenever and wherever the said privilege shall be suspended, as aforesaid, no military or other officer shall be compelled, in answer to any writ of habeas corpus, to return the body of any person or persons

detained by him by authority of the President; but upon the certificate, under oath, of the officer having charge of any one so detained that such person is detained by him as a prisoner under authority of the President, further proceedings under the writ of habeas corpus shall be suspended by the judge or court having issued the said writ, so long as said suspension by the President shall remain in force, and said rebellion continue.

SEC. 2. *And be it further enacted*, That the Secretary of State and the Secretary of War be, and they are hereby, directed, as soon as may be practicable, to furnish to the judges of the circuit and district courts of the United States and of the District of Columbia a list of the names of all persons, citizens of states in which the administration of the laws has continued unimpaired in the said Federal courts, who are now, or may hereafter be, held as prisoners of the United States, by order or authority of the President of the United States or either of said Secretaries, in any fort, arsenal, or other place, as state or political prisoners, or otherwise than as prisoners of war; the said list to contain the names of all those who reside in the respective jurisdictions of said judges, or who may be deemed by the said Secretaries, or either of them, to have violated any law of the United States in any of said jurisdictions, and also the date of each arrest; . . . And in all cases where a grand jury, having attended any of said courts having jurisdiction in the premises, after the passage of this act, and after the furnishing of said list, as aforesaid, has terminated its session without finding an indictment or presentment, or other proceeding against any such person, it shall be the duty of the judge of said court forthwith to make an order that any such prisoner desiring a discharge from said imprisonment be brought before him to be discharged; and every officer of the United States having custody of such prisoner is hereby directed immediately to obey and execute said judge's order; and in case he shall delay or refuse so to do, he shall be subject to indictment for a misdemeanor, and be punished by a fine of not less than five hundred dollars and imprisonment in the common jail for a period not less than six months, in the discretion of the court; *Provided, however*, That no person shall be discharged by virtue of the provisions of this act until after he or she shall have taken an oath of allegiance

to the Government of the United States, and to support the Constitution thereof; and that he or she will not hereafter in any way encourage or give aid and comfort to the present rebellion, or the supporters thereof. . . .

SEC. 3. *And be it further enacted*, That in case any of such prisoners shall be under indictment or presentment for any offence against the laws of the United States, and by existing laws bail or a recognizance may be taken for the appearance for trial of such person, it shall be the duty of said judge at once to discharge such person upon bail or recognizance for trial as aforesaid. And in case the said Secretaries of State and War shall for any reason refuse or omit to furnish the said list of persons held as prisoners as aforesaid at the time of the passage of this act within twenty days thereafter, and of such persons as hereafter may be arrested within twenty days from the time of the arrest, any citizen may, after a grand jury shall have terminated its session without finding an indictment or presentment, as provided in the second section of this act, by a petition alleging the facts aforesaid touching any of the persons so as aforesaid imprisoned, supported by the oath of such petitioner or any other credible person, obtain and be entitled to have the said judge's order to discharge such prisoner on the same terms and conditions prescribed in the second section of this act: *Provided, however*, That the said judge shall be satisfied such allegations are true.

SEC. 4. *And be it further enacted*, That any order of the President, or under his authority, made at any time during the existence of the present rebellion, shall be a defence in all courts to any action or prosecution, civil or criminal, pending, or to be commenced, for any search, seizure, arrest, or imprisonment, made, done, or committed, or acts omitted to be done, under and by virtue of such order, or under color of any law of Congress, and such defence may be made by special plea, or under the general issue.

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No. 136. Resolution against Foreign Mediation

March 3, 1863

DECEMBER 4, 1862, Thaddeus Stevens offered in the House four resolutions, one of which declared "that this government can never accept the mediation nor permit the intervention of any foreign nation during this rebellion in our domestic affairs." A report from the Secretary of State, with documents, "on the subjects of mediation, arbitration, or other measures looking to the termination of the existing civil war," was laid before the Senate February 12, 1863, and referred to the Committee on Foreign Relations, which reported on the 28th, through Charles Sumner, the resolution following. The resolution passed the Senate March 3, by a vote of 31 to 5, and the House on the same day by a vote of 103 to 28.

REFERENCES. — *Text* in *Senate Journal*, 37th Cong , 3d Sess., 367, 368. There was no debate in the House. For the diplomatic correspondence see *British and Foreign State Papers*, LV., 412–451.

WHEREAS it appears from the diplomatic correspondence submitted to Congress that a proposition, friendly in form, looking to pacification through foreign meditation, has been made to the United States by the Emperor of the French and promptly declined by the President; and whereas the idea of mediation or intervention in some shape may be regarded by foreign governments as practicable, and such governments, through this misunderstanding, may be led to proceedings tending to embarrass the friendly relations which now exist between them and the United States; and whereas, in order to remove for the future all chance of misunderstanding on this subject, and to secure for the United States the full enjoyment of that freedom from foreign interference which is one of the highest rights of independent states, it seems fit that Congress should declare its convictions thereon: Therefore —

Resolved, (the House of Representatives concurring,) That while in times past the United States have sought and accepted the friendly mediation or arbitration of foreign powers for the pacific adjustment of *international* questions, where the United States were the party of the one part and some other sovereign power the party of the other part; and while they are not dis-

posed to misconstrue the natural and humane desire of foreign powers to aid in arresting *domestic* troubles, which, widening in their influence, have afflicted other countries, especially in view of the circumstance, deeply regretted by the American people, that the blow aimed by the rebellion at the national life has fallen heavily upon the laboring population of Europe: yet, notwithstanding these things, Congress cannot hesitate to regard every proposition of foreign interference in the present contest as so far unreasonable and inadmissible that its only explanation will be found in a misunderstanding of the true state of the question, and of the real character of the war in which the republic is engaged.

Resolved, That the United States are now grappling with an unprovoked and wicked rebellion, which is seeking the destruction of the republic that it may build a new power, whose corner-stone, according to the confession of its chief, shall be slavery; that for the suppression of this rebellion, and thus to save the republic and to prevent the establishment of such a power, the national government is now employing armies and fleets, in full faith that through these efforts all the purposes of conspirators and rebels will be crushed; that while engaged in this struggle, on which so much depends, any proposition from a foreign power, whatever form it may take, having for its object the arrest of these efforts, is, just in proportion to its influence, an encouragement to the rebellion, and to its declared pretensions, and, on this account, is calculated to prolong and embitter the conflict, to cause increased expenditure of blood and treasure, and to postpone the much-desired day of peace; that, with these convictions, and not doubting that every such proposition, although made with good intent, is injurious to the national interests, Congress will be obliged to look upon any further attempt in the same direction as an unfriendly act which it earnestly deprecates, to the end that nothing may occur abroad to strengthen the rebellion or to weaken those relations of good will with foreign powers which the United States are happy to cultivate.

Resolved, That the rebellion from its beginning, and far back even in the conspiracy which preceded its outbreak, was encouraged by the hope of support from foreign powers; that its chiefs

frequently boasted that the people of Europe were so far dependent upon regular supplies of the great southern staple that, sooner or later, their governments would be constrained to take side with the rebellion in some effective form, even to the extent of forcible intervention, if the milder form did not prevail; that the rebellion is now sustained by this hope, which every proposition of foreign interference quickens anew, and that, without this life-giving support, it must soon yield to the just and paternal authority of the national government; that, considering these things, which are aggravated by the motive of the resistance thus encouraged, the United States regret that foreign powers have not frankly told the chiefs of the rebellion that the work in which they are engaged is hateful, and that a new government, such as they seek to found, with slavery as its acknowledged cornerstone, and with no other declared object of separate existence, is so far shocking to civilization and the moral sense of mankind that it must not expect welcome or recognition in the commonwealth of nations.

Resolved, That the United States, confident in the justice of their cause, which is the cause, also, of good government and of human rights everywhere among men; anxious for the speedy restoration of peace, which shall secure tranquillity at home and remove all occasion of complaint abroad; and awaiting with well-assured trust the final suppression of the rebellion, through which all these things, rescued from present danger, will be secured forever, and the republic, one and indivisible, triumphant over its enemies, will continue to stand an example to mankind, *hereby announce*, as their unalterable purpose, that the war will be vigorously prosecuted, according to the humane principles of Christian states, until the rebellion shall be overcome; and they reverently invoke upon their cause the blessings of Almighty God.

Resolved, That the President be requested to transmit a copy of these resolutions, through the Secretary of State, to the ministers of the United States in foreign countries, that the declaration and protest herein set forth may be communicated by them to the governments to which they are accredited.

No. 137. Proclamation of Amnesty

December 8, 1863

THE proclamation of December 8, 1863, offering amnesty on conditions, was issued under authority of the so-called Confiscation Act of July 17, 1862 [No. 132]. In his annual message of the same date, Lincoln urged the propriety of the proclamation, and expressed the opinion "that nothing is attempted beyond what is amply justified by the Constitution." A supplementary proclamation of March 26, 1864, explained that the previous proclamation did not apply to prisoners of war.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XIII., Appendix, vii–ix. A circular to United States district attorneys is in McPherson, *Rebellion*, 148, 149.

[THE proclamation begins with a statement of the constitutional right of the President to grant pardons, of the existence of rebellion in certain States, of the authorization of pardon by proclamation under the Confiscation Act, and of the previous issuance of proclamations "in regard to the liberation of slaves," and continues:] and

Whereas, it is now desired by some persons heretofore engaged in said rebellion to resume their allegiance to the United States, and to reinaugurate loyal state governments within and for their respective states: Therefore —

I, ABRAHAM LINCOLN, President of the United States, do proclaim, declare, and make known to all persons who have, directly or by implication, participated in the existing rebellion, except as hereinafter excepted, that a full pardon is hereby granted to them and each of them, with restoration of all rights of property, except as to slaves, and in property cases where rights of third parties shall have intervened, and upon the condition that every such person shall take and subscribe an oath, and thenceforward keep and maintain said oath inviolate; and which oath shall be registered for permanent preservation, and shall be of the tenor and effect following, to wit: —

"I, _____ _____, do solemnly swear, in presence of Almighty God, that I will henceforth faithfully support, protect, and defend the Constitution of the United States and the Union of the States thereunder; and that I will, in like manner, abide by and faithfully support all acts of congress passed during the existing

rebellion with reference to slaves, so long and so far as not repealed, modified, or held void by congress, or by decision of the supreme court; and that I will, in like manner, abide by and faithfully support all proclamations of the President made during the existing rebellion having reference to slaves, so long and so far as not modified or declared void by decision of the supreme court. So help me God."

The persons excepted from the benefits of the foregoing provisions are all who are, or shall have been, civil or diplomatic officers or agents of the so-called Confederate government; all who have left judicial stations under the United States to aid the rebellion; all who are, or shall have been, military or naval officers of said so-called Confederate government above the rank of colonel in the army or of lieutenant in the navy; all who left seats in the United States congress to aid the rebellion; all who resigned commissions in the army or navy of the United States and afterwards aided the rebellion; and all who have engaged in any way in treating colored persons, or white persons in charge of such, otherwise than lawfully as prisoners of war, and which persons may have been found in the United States service as soldiers, seamen, or in any other capacity.

And I do further proclaim, declare, and make known that whenever, in any of the States of Arkansas, Texas, Louisiana, Mississippi, Tennessee, Alabama, Georgia, Florida, South Carolina, and North Carolina,[1] a number of persons, not less than one tenth in number of the votes cast in such state at the presidential election . . . [of 1860] . . . , each having taken the oath aforesaid, and not having since violated it, and being a qualified voter by the election law of the state existing immediately before the so-called act of secession, and excluding all others, shall reestablish a state government which shall be republican, and in nowise contravening said oath, such shall be recognized as the true government of the state, and the state shall receive thereunder the benefits of the constitutional provision which declares that "the United States shall guaranty to every state in this Union a republican form of government, and shall protect each of them

[1] The omission of Virginia is explained by the fact that Lincoln had already recognized the so-called Pierpont government. — Ed.

against invasion; and on application of the legislature, or the executive, (when the legislature cannot be convened,) against domestic violence."

And I do further proclaim, declare, and make known that any provision which may be adopted by such state government in relation to the freed people of such state, which shall recognize and declare their permanent freedom, provide for their education, and which may yet be consistent as a temporary arrangement with their present condition as a laboring, landless, and homeless class, will not be objected to by the National Executive.

And it is suggested as not improper that, in constructing a loyal state government in any state, the name of the state, the boundary. the subdivisions, the constitution, and the general code of laws, as before the rebellion, be maintained, subject only to the modifications made necessary by the conditions hereinbefore stated, and such others, if any, not contravening said conditions, and which may be deemed expedient by those framing the new state government.

To avoid misunderstanding, it may be proper to say that this proclamation, so far as it relates to state governments, has no reference to states wherein loyal state governments have all the while been maintained. And, for the same reason, it may be proper to further say, that whether members sent to congress from any state shall be admitted to seats constitutionally rests exclusively with the respective houses, and not to any extent with the Executive. And still further, that this proclamation is intended to present the people of the states wherein the national authority has been suspended, and loyal state governments have been subverted, a mode in and by which the national authority and loyal state governments may be reëstablished within said states, or in any of them; and, while the mode presented is the best the Executive can suggest, with his present impressions, it must not be understood that no other possible mode would be acceptable.

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No. 138. National Bank Act

June 3, 1864

THE beginning of the present national bank system is to be found in the act "to provide a national currency, secured by a pledge of United States stocks, and to provide for the circulation and redemption thereof," approved February 25, 1863. This act, however, proved defective, and the comptroller of the currency, in a report accompanying the annual report of the Secretary of the Treasury, December 10, 1863, made numerous suggestions for amendment. A bill with the same title as the existing act was reported in the House, March 14, by Hooper of Massachusetts, from the Committee of Ways and Means, and after protracted discussion was laid on the table by a vote of 90 to 44. Another bill with similar title was introduced by Hooper April 11, and passed the House on the 18th by a vote of 80 to 66. A bill to the same effect had been introduced in the Senate, April 8, by John Sherman of Ohio, and referred to the Committee on Finance, which, on the 21st, reported the House bill with amendments. The amended bill passed the Senate May 11, by a vote of 30 to 9. The House disagreed to the Senate amendments, and the bill received its final form from a conference committee, whose report was accepted by the houses June 1.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XIII., 99–118. Only the most important parts of the act are given below. The act has been many times amended; editions showing the various changes are issued from time to time by the comptroller of the currency. For the proceedings see the *House and Senate Journals*, 38th Cong., 1st Sess., and the *Cong. Globe*, where will be found the texts of all the important amendments proposed or adopted. A comparison of Hooper's first bill with the act of February 25 will be found in the *Globe*, March 23.

An Act to provide a National Currency, secured by a Pledge of United States Bonds, and to provide for the Circulation and Redemption thereof.

Be it enacted . . . , That there shall be established in the treasury department a separate bureau, which shall be charged with the execution of this and all other laws that may be passed by congress respecting the issue and regulation of a national currency secured by United States bonds. The chief officer of the said bureau shall be denominated the comptroller of the currency, and shall be under the general direction of the Secretary of the Treasury. He shall be appointed by the President, on the recommendation of the Secretary of the Treasury, by and with the advice and consent of the Senate, and shall hold

his office for the term of five years unless sooner removed by the President, upon reasons to be communicated by him to the Senate. . . . The comptroller and deputy-comptroller shall not, either directly or indirectly, be interested in any association issuing national currency under the provisions of this act.

* * * * * * * *

SEC. 5. *And be it further enacted*, That associations for carrying on the business of banking may be formed by any number of persons, not less in any case than five, who shall enter into articles of association, which shall specify in general terms the object for which the association is formed, and may contain any other provisions, not inconsistent with the provisions of this act, which the association may see fit to adopt for the regulation of the business of the association and the conduct of its affairs, which said articles shall be signed by the persons uniting to form the association, and a copy of them forwarded to the comptroller of the currency, to be filed and preserved in his office.

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SEC. 7. *And be it further enacted*, That no association shall be organized under this act, with a less capital than one hundred thousand dollars, nor in a city whose population exceeds fifty thousand persons, with a less capital than two hundred thousand dollars: *Provided*, That banks with a capital of not less than fifty thousand dollars may, with the approval of the Secretary of the Treasury, be organized in any place the population of which does not exceed six thousand inhabitants.[1]

SEC. 8. *And be it further enacted*, That every association formed pursuant to the provisions of this act shall from the date of the execution of its organization certificate, be a body corporate, but shall transact no business except such as may be incidental to its organization and necessarily preliminary, until authorized by the comptroller of the currency to commence the business of banking. Such association shall have power to adopt a corporate seal, and shall have succession by the name designated in its organization certificate, for the period of twenty years from its organization, unless sooner dissolved according to the provisions of its articles of association, or by the act of its shareholders owning two

[1] See act of March 14, 1900, section 10. — ED.

thirds of its stock, or unless the franchise shall be forfeited by a violation of this act; by such name it may make contracts . . . [&c.] . . . , and exercise under this act all such incidental powers as shall be necessary to carry on the business of banking by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; by obtaining, issuing, and circulating notes according to the provisions of this act . . .

SEC. 9. *And be it further enacted*, That the affairs of every association shall be managed by not less than five directors, one of whom shall be the president. Every director shall, during his whole term of service, be a citizen of the United States; and at least three fourths of the directors shall have resided in the state, territory, or district in which such association is located one year next preceding their election as directors, and be residents of the same during their continuance in office. Each director shall own, in his own right, at least ten shares of the capital stock of the association of which he is a director. . . .

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SEC. 11. *And be it further enacted*, That in all elections of directors, and in deciding all questions at meetings of shareholders, each shareholder shall be entitled to one vote on each share of stock held by him. . . .

SEC. 12. *And be it further enacted*, That the capital stock of any association formed under this act shall be divided into shares of one hundred dollars each, and be deemed personal property and transferable on the books of the association in such manner as may be prescribed in the by-laws or articles of association. . . . The shareholders of each association formed under the provisions of this act, and of each existing bank or banking association that may accept the provisions of this act, shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such association to the extent of the amount of their stock therein at the par value thereof, in addition to the amount invested in such shares; except that shareholders of any banking association now existing under state laws, having not less than five millions of dollars of capital actually paid in, and a surplus of twenty per centum on hand, both to be deter-

mined by the comptroller of the currency, shall be liable only to the amount invested in their shares [1]. . .

* * * * * * * *

Sec. 14. *And be it further enacted*, That at least fifty per centum of the capital stock of every association shall be paid in before it shall be authorized to commence business; and the remainder of the capital stock of such association shall be paid in instalments of at least ten per centum each on the whole amount of the capital as frequently as one instalment at the end of each succeeding month from the time it shall be authorized by the comptroller to commence business. . . .

* * * * * * * *

Sec. 16. *And be it further enacted*, That every association, after having complied with the provisions of this act, preliminary to the commencement of banking business under its provisions, and before it shall be authorized to commence business, shall transfer and deliver to the treasurer of the United States any United States registered bonds bearing interest to an amount not less than thirty thousand dollars nor less than one third of the capital stock paid in, which bonds shall be deposited with the treasurer of the United States and by him safely kept in his office until the same shall be otherwise disposed of, in pursuance of the provisions of this act; and the Secretary of the Treasury is hereby authorized to receive and cancel any United States coupon bonds, and to issue in lieu thereof registered bonds of like amount, bearing a like rate of interest, and having the same time to run; and the deposit of bonds shall be, by every association, increased as its capital may be paid up or increased, so that every association shall at all times have on deposit with the treasurer registered United States bonds to the amount of at least one third of its capital stock actually paid in. . . .

* * * * * * * *

Sec. 21. *And be it further enacted*, That upon the transfer and delivery of bonds to the treasurer, as provided in the foregoing section, the association making the same shall be entitled to receive from the comptroller of the currency circulating notes of different denominations, in blank, registered and counter-

[1] This exception was designed to include the Bank of Commerce of New York. — Ed.

signed as hereinafter provided, equal in amount to ninety per centum of the current market value of the United States bonds so transferred and delivered, but not exceeding ninety per centum of the amount of said bonds at the par value thereof, if bearing interest at a rate not less than five per centum per annum;[1] and at no time shall the total amount of such notes, issued to any such association, exceed the amount at such time actually paid in of its capital stock.

SEC. 22. *And be it further enacted*, That the entire amount of notes for circulation to be issued under this act shall not exceed three hundred millions of dollars. . . .

SEC. 23. *And be it further enacted*, That after any such association shall have caused its promise to pay such notes on demand to be signed by the president or vice-president and cashier thereof, in such manner as to make them obligatory promissory notes, payable on demand, at its place of business, such association is hereby authorized to issue and circulate the same as money; and the same shall be received at par in all parts of the United States in payment of taxes, excises, public lands, and all other dues to the United States, except for duties on imports; and also for all salaries and other debts and demands owing by the United States to individuals, corporations, and associations within the United States, except interest on the public debt, and in redemption of the national currency. And no such association shall issue post notes or any other notes to circulate as money than such as are authorized by the foregoing provisions of this act.[2]

* * * * * * * *

SEC. 26. *And be it further enacted*, That the bonds transferred to and deposited with the treasurer of the United States, as hereinbefore provided, by any banking association for the security of its circulating notes, shall be held exclusively for that purpose, until such notes shall be redeemed, except as provided in this act; but the comptroller of the currency shall give to any such banking association powers of attorney to receive and appropriate to its own use the interest on the bonds which it shall have so trans-

[1] See act of March 3, 1865 (*U. S. Stat. at Large*, XIII., 498), relative to the allotment of circulation. — ED.

[2] As to State taxation of national bank currency and United States notes, see act of August 13, 1894 (*U. S. Stat. at Large*, XXVIII., 278). — ED.

ferred to the treasurer; but such powers shall become inoperative whenever such banking association shall fail to redeem its circulating notes as aforesaid. Whenever the market or cash value of any bonds deposited with the treasurer of the United States, as aforesaid, shall be reduced below the amount of the circulation issued for the same, the comptroller of the currency is hereby authorized to demand and receive the amount of such depreciation in other United States bonds at cash value, or in money, from the association receiving said bills, to be deposited with the treasurer of the United States as long as such depreciation continues. . . .

* * * * * * * *

SEC. 29. *And be it further enacted*, That the total liabilities to any association, of any person, or of any company, corporation, or firm for money borrowed, including in the liabilities of a company or firm the liabilities of the several members thereof, shall at no time exceed one tenth part of the amount of the capital stock of such association actually paid in: *Provided*, That the discount of bona fide bills of exchange drawn against actually existing values, and the discount of commercial or business paper actually owned by the person or persons, corporation, or firm negotiating the same shall not be considered as money borrowed.

SEC. 30. *And be it further enacted*, That every association may take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidences of debt, interest at the rate allowed by the laws of the state or territory where the bank is located, and no more. . . . And when no rate is fixed by the laws of the state or territory, the bank may take, receive, reserve, or charge a rate not exceeding seven per centum. . . .

SEC. 31. *And be it further enacted*, That every association in the cities hereinafter named shall, at all times, have on hand, in lawful money of the United States, an amount equal to at least twenty-five per centum of the aggregate amount of its notes in circulation and its deposits; and every other association shall, at all times, have on hand, in lawful money of the United States, an amount equal to at least fifteen per centum of the aggregate amount of its notes in circulation, and of its deposits. And whenever the lawful money of any association in any of the cities hereinafter named shall be below the amount of twenty-five per

centum of its circulation and deposits, and whenever the lawful money of any other association shall be below fifteen per centum of its circulation and deposits, such association shall not increase its liabilities by making any new loans or discounts otherwise than by discounting or purchasing bills of exchange payable at sight, nor make any dividend of its profits until the required proportion between the aggregate amount of its outstanding notes of circulation and deposits and its lawful money of the United States shall be restored: *Provided*, That three fifths of said fifteen per centum may consist of balances due to an association available for the redemption of its circulating notes from associations approved by the comptroller of the currency, organized under this act, in the cities of Saint Louis, Louisville, Chicago, Detroit, Milwaukee, New Orleans, Cincinnati, Cleveland, Pittsburg, Baltimore, Philadelphia, Boston, New York, Albany, Leavenworth, San Francisco, and Washington City:[1] *Provided, also*, That clearing-house certificates, representing specie or lawful money specially deposited for the purpose of any clearing-house association, shall be deemed to be lawful money in the possession of any association belonging to such clearing-house holding and owning such certificate, and shall be considered to be a part of the lawful money which such association is required to have under the foregoing provisions of this section: *Provided*, That the cities of Charleston and Richmond may be added to the list of cities in the national associations of which other associations may keep three fifths of their lawful money, whenever, in the opinion of the comptroller of the currency, the condition of the southern states will warrant it. And it shall be competent for the comptroller of the currency to notify any association, whose lawful money reserve as aforesaid shall be below the amount to be kept on hand as aforesaid, to make good such reserve; and if such association shall fail for thirty days thereafter so to make good its reserve of lawful money of the United States, the comptroller may, with the concurrence of the Secretary of the Treasury, appoint a receiver to wind up the business of such association, as provided in this act.

SEC. 32. *And be it further enacted*, That each association organized in any of the cities named in the foregoing section

[1] See act of March 3, 1887, chap. 378 (*U. S. Stat. at Large*, XXIV., 559, 560) — ED.

shall select, subject to the approval of the comptroller of the currency, an association in the city of New York, at which it will redeem its circulating notes at par. And each of such associations may keep one half of its lawful money reserve in cash deposits in the city of New York. And each association not organized within the cities named in the preceding section shall select, subject to the approval of the comptroller of the currency, an association in either of the cities named in the preceding section at which it will redeem its circulating notes at par. . . . [*Provided*] . . . , That every association formed or existing under the provisions of this act shall take and receive at par, for any debt or liability to said association, any and all notes or bills issued by any association existing under and by virtue of this act.

* * * * * * * *

Sec. 36. *And be it further enacted*, That no association shall at any time be indebted, or in any way liable, to an amount exceeding the amount of its capital stock at such time actually paid in and remaining undiminished by losses or otherwise, except on the following accounts, that is to say: —

First. On account of its notes of circulation.

Second. On account of moneys deposited with, or collected by, such association.

Third. On account of bills of exchange or drafts drawn against money actually on deposit to the credit of such association, or due thereto.

Fourth. On account of liabilities to its stockholders for dividends and reserved profits.

* * * * * * * *

Sec. 38. *And be it further enacted*, That no association, or any member thereof, shall, during the time it shall continue its banking operations, withdraw, or permit to be withdrawn, either in form of dividends or otherwise, any portion of its capital. And if losses shall at any time have been sustained by any such association equal to or exceeding its undivided profits then on hand, no dividend shall be made; and no dividend shall ever be made by any association, while it shall continue its banking operations, to an amount greater than its net profits then on hand, deducting therefrom its losses and bad debts. . . .

* * * * * * * *

SEC. 41. *And be it further enacted*, That the plates and special dies to be procured by the comptroller of the currency for the printing of such circulating notes shall remain under his control and direction, and the expenses necessarily incurred in executing the provisions of this act respecting the procuring of such notes, and all other expenses of the bureau, shall be paid out of the proceeds of the taxes or duties now or hereafter to be assessed on the circulation, and collected from associations organized under this act. And in lieu of all existing taxes, every association shall pay to the treasurer of the United States, in the months of January and July, a duty of one half of one per centum each half year from and after . . . [January 1, 1864] . . . , upon the average amount of its notes in circulation, and a duty of one quarter of one per centum each half year upon the average amount of its deposits, and a duty of one quarter of one per centum each half year, as aforesaid, on the average amount of its capital stock beyond the amount invested in United States bonds; . . . *Provided* . . . , That nothing in this act shall exempt the real estate of associations from either state, county, or municipal taxes to the same extent, according to its value, as other real estate is taxed.

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SEC. 44. *And be it further enacted*, That any bank incorporated by special law, or any banking institution organized under a general law of any state, may, by authority of this act, become a national association under its provisions, by the name prescribed in its organization certificate. . . . *Provided, however*, That no such association shall have a less capital than the amount prescribed for banking associations under this act.[1]

SEC. 45. *And be it further enacted*, That all associations under this act, when designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, except receipts from customs, under such regulations as may be prescribed by the Secretary; and they may also be employed as financial agents of the government; and they shall perform all such reasonable duties, as depositaries of public moneys and financial agents of the government, as may be required of them. And the Secretary of the Treasury shall require of the associations thus designated

[1] See act of February 14, 1880 (*U. S. Stat. at Large*, XXI., 661). — ED.

satisfactory security, by the deposit of United States bonds and otherwise, for the safe-keeping and prompt payment of the public money deposited with them, and for the faithful performance of their duties as financial agents of the government: *Provided*, That every association which shall be selected and designated as receiver or depositary of the public money shall take and receive at par all of the national currency bills, by whatever association issued, which have been paid in to the government for internal revenue, or for loans or stocks.

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No. 139. Proclamation regarding Reconstruction

July 8, 1864

DECEMBER 15, 1863, on motion of Henry Winter Davis of Maryland, so much of Lincoln's message of December 8 as related "to the duty of the United States to guaranty a republican form of government to the States in which the governments recognized by the United States have been abrogated or overthrown" was referred, by a vote of 91 to 80, to a select committee of the House, with instructions to report bills to carry into execution the said guarantee. A bill was reported by the committee February 15, 1864, and passed the House May 4 by a vote of 74 to 66. July 1 the Senate, by a vote of 30 to 13, adopted a substitute, proposed by B. Gratz Brown of Missouri, declaring that when the inhabitants of any State had been declared in insurrection by proclamation under the act of July 13, 1861, they should be "incapable of casting any vote for electors of President or Vice President of the United States, or of electing Senators and Representatives in Congress, until said insurrection in said State is suppressed or abandoned and said inhabitants have returned to their obedience to the Government of the United States, nor until such return to obedience shall be declared by proclamation of the President, issued by virtue of an act of Congress, hereafter to be passed, authorizing the same." The House refused to concur, and July 2 the Senate, by a vote of 18 to 14, receded, and the House bill passed. Lincoln was opposed to the bill and withheld his approval, but immediately upon the adjournment of Congress issued the following proclamation with the bill attached. The bill was the first formal plan of reconstruction agreed upon by Congress.

REFERENCES. — *Text* in *U. S. Statutes at Large*, XIII., Appendix, xiv–xvii. For the proceedings see the *House and Senate Journals*, 38th Cong., 1st Sess., and the *Cong. Globe*.

(The proclamation recites the passage of the bill annexed, and its presentation to the President "less than one hour before the *sine die* adjournment of said session," and continues:)

And whereas the said bill contains, among other things, a plan for restoring the states in rebellion to their proper practical relation in the Union, which plan expresses the sense of congress upon that subject, and which plan it is now thought fit to lay before the people for their consideration:

Now, therefore, I, ABRAHAM LINCOLN, President of the United States, do proclaim, declare, and make known, that, while I am (as I was in December last, when by proclamation I propounded a plan for restoration) unprepared by a formal approval of this bill, to be inflexibly committed to any single plan of restoration; and, while I am also unprepared to declare that the free state constitutions and governments already adopted and installed in Arkansas and Louisiana shall be set aside and held for nought, thereby repelling and discouraging the loyal citizens who have set up the same as to further effort, or to declare a constitutional competency in congress to abolish slavery in states, but am at the same time sincerely hoping and expecting that a constitutional amendment abolishing slavery throughout the nation may be adopted, nevertheless I am fully satisfied with the system for restoration contained in the bill as one very proper plan for the loyal people of any state choosing to adopt it, and that I am, and at all times shall be, prepared to give the executive aid and assistance to any such people, so soon as the military resistance to the United States shall have been suppressed in any such state, and the people thereof shall have sufficiently returned to their obedience to the constitution and the laws of the United States, in which cases military governors will be appointed, with directions to proceed according to the bill.

* * * * * * * *

A Bill to guarantee to certain States whose Governments have been usurped or overthrown a Republican Form of Government.

Be it enacted . . ., That in the states declared in rebellion against the United States, the President shall, by and with the advice and consent of the Senate, appoint for each a provisional governor, . . . who shall be charged with the civil administration of such state until a state government therein shall be recognized as hereinafter provided.

SEC. 2. *And be it further enacted*, That so soon as the military resistance to the United States shall have been suppressed in any such state, and the people thereof shall have sufficiently returned to their obedience to the constitution and the laws of the United States, the provisional governor shall direct the marshal of the United States, as speedily as may be, to name a sufficient number of deputies, and to enroll all white male citizens of the United States, resident in the state in their respective counties, and to request each one to take the oath to support the constitution of the United States, and in his enrolment to designate those who take and those who refuse to take that oath, which rolls shall be forthwith returned to the provisional governor; and if the persons taking that oath shall amount to a majority of the persons enrolled in the state, he shall, by proclamation, invite the loyal people of the state to elect delegates to a convention charged to declare the will of the people of the state relative to the reëstablishment of a state government subject to, and in conformity with, the constitution of the United States.

SEC. 3. *And be it further enacted*, That the convention shall consist of as many members as both houses of the last constitutional state legislature, apportioned by the provisional governor among the counties, parishes, or districts of the state, in proportion to the white population, returned as electors, by the marshal, in compliance with the provisions of this act. The provisional governor shall, by proclamation, declare the number of delegates to be elected by each county, parish, or election district; name a day of election not less than thirty days thereafter; designate the places of voting in each county, parish, or district, conforming as nearly as may be convenient to the places used in the state elections next preceding the rebellion; appoint one or more commissioners to hold the election at each place of voting, and provide an adequate force to keep the peace during the election.

SEC. 4. *And be it further enacted*, That the delegates shall be elected by the loyal white male citizens of the United States of the age of twenty-one years, and resident at the time in the county, parish, or district in which they shall offer to vote, and enrolled as aforesaid, or absent in the military service of the United States, and who shall take and subscribe the oath of allegiance to the United States in the form contained in the act of . . . [July 2, 1862] . . . ; and all such citizens of the United States who are in the military service of the United States shall vote at the headquarters of their respective commands, under such regulations as may be prescribed by the provisional governor for the taking and return of their votes; but no person who has held or exercised any office, civil or military, state or confederate, under the rebel usurpation, or who has voluntarily borne arms against the United States, shall vote, or be eligible to be elected as delegate, at such election.

SEC. 5. *And be it further enacted*, That the said commissioners, or either of them, shall hold the election in conformity with this act and, so far as may be consistent therewith, shall proceed in the manner used in the state prior to the rebellion. The oath of allegiance shall be taken and subscribed on the poll-book by every voter in the form above prescribed, but every person known by, or proved to, the commissioners to have held or exercised any office, civil or military, state or confederate, under the rebel usurpation, or to have

voluntarily borne arms against the United States, shall be excluded, though he offer to take the oath; and in case any person who shall have borne arms against the United States shall offer to vote he shall be deemed to have borne arms voluntarily unless he shall prove the contrary by the testimony of a qualified voter. The poll-book, showing the name and oath of each voter, shall be returned to the provisional governor by the commissioners of election or the one acting, and the provisional governor shall canvass such returns, and declare the person having the highest number of votes elected.

SEC. 6. *And be it further enacted*, That the provisional governor shall, by proclamation, convene the delegates elected as aforesaid, at the capital of the state, on a day not more than three months after the election, giving at least thirty days' notice of such day. In case the said capital shall in his judgment be unfit, he shall in his proclamation appoint another place. He shall preside over the deliberations of the convention, and administer to each delegate, before taking his seat in the convention, the oath of allegiance to the United States in the form above prescribed.

SEC. 7. *And be it further enacted*, That the convention shall declare, on behalf of the people of the state, their submission to the constitution and laws of the United States, and shall adopt the following provisions, hereby prescribed by the United States in the execution of the constitutional duty to guarantee a republican form of government to every state, and incorporate them in the constitution of the state, that is to say:

First. No person who has held or exercised any office, civil or military, except offices merely ministerial, and military offices below the grade of colonel, state or confederate, under the usurping power, shall vote for or be a member of the legislature, or governor.

Second. Involuntary servitude is forever prohibited, and the freedom of all persons is guaranteed in said state.

Third. No debt, state or confederate, created by or under the sanction of the usurping power, shall be recognized or paid by the state.

SEC. 8. *And be it further enacted*, That when the convention shall have adopted those provisions, it shall proceed to reëstablish a republican form of government, and ordain a constitution containing those provisions, which, when adopted, the convention shall by ordinance provide for submitting to the people of the state, entitled to vote under this law, at an election to be held in the manner prescribed by the act for the election of delegates; but at a time and place named by the convention, at which election the said electors, and none others, shall vote directly for or against such constitution and form of state government, and the returns of said election shall be made to the provisional governor, who shall canvass the same in the presence of the electors, and if a majority of the votes cast shall be for the constitution and form of government, he shall certify the same, with a copy thereof, to the President of the United States, who, after obtaining the assent of congress, shall, by proclamation, recognize the government so established, and none other, as the constitutional government of the state, and from the date of such recognition, and not before, Senators and Representatives, and electors for President and Vice-President may be elected in such state, according to the laws of the state and of the United States.

SEC. 9. *And be it further enacted*, That if the convention shall refuse to reëstablish the state government on the conditions aforesaid, the provisional governor shall declare it dissolved; but it shall be the duty of the President, whenever he shall have reason to believe that a sufficient number of the people of the state entitled to vote under this act, in number not less than a majority of those enrolled, as aforesaid, are willing to reëstablish a state government on the conditions aforesaid, to direct the provisional governor to order another election of delegates to a convention for the purpose and in the manner prescribed in this act, and to proceed in all respects as hereinbefore provided, either to dissolve the convention, or to certify the state government reëstablished by it to the President.

SEC. 10. *And be it further enacted*, That, until the United States shall have recognized a republican form of state government, the provisional governor in each of said states shall see that this act, and the laws of the United States, and the laws of the state in force when the state government was overthrown by the rebellion, are faithfully executed within the state; but no law or usage whereby any person was heretofore held in involuntary servitude shall be recognized or enforced by any court or officer in such state, and the laws for the trial and punishment of white persons shall extend to all persons, and jurors shall have the qualifications of voters under this law for delegates to the convention. The President shall appoint such officers provided for by the laws of the state when its government was overthrown as he may find necessary to the civil administration of the state, all which officers shall be entitled to receive the fees and emoluments provided by the state laws for such officers.

SEC. 11. *And be it further enacted*, That until the recognition of a state government as aforesaid, the provisional governor shall, under such regulations as he may prescribe, cause to be assessed, levied, and collected, for the year eighteen hundred and sixty-four, and every year thereafter, the taxes provided by the laws of such state to be levied during the fiscal year preceding the overthrow of the state government thereof, in the manner prescribed by the laws of the state, as nearly as may be; and the officers appointed, as aforesaid, are vested with all powers of levying and collecting such taxes, by distress or sale, as were vested in any officers or tribunal of the state government aforesaid for those purposes. The proceeds of such taxes shall be accounted for to the provisional governor, and be by him applied to the expenses of the administration of the laws in such state, subject to the direction of the President, and the surplus shall be deposited in the treasury of the United States to the credit of such state, to be paid to the state upon an appropriation therefor, to be made when a republican form of government shall be recognized therein by the United States.

SEC. 12. *And be it further enacted*, That all persons held to involuntary servitude or labor in the states aforesaid are hereby emancipated and discharged therefrom, and they and their posterity shall be forever free. And if any such persons or their posterity shall be restrained of liberty, under pretence of any claim to such service or labor, the courts of the United States shall, on habeas corpus, discharge them.

SEC. 13. *And be it further enacted*, That if any person declared free by this act, or any law of the United States, or any proclamation of the President, be

restrained of liberty, with intent to be held in or reduced to involuntary servitude or labor, the person convicted before a court of competent jurisdiction of such act shall be punished by fine of not less than fifteen hundred dollars, and be imprisoned not less than five nor more than twenty years.

SEC. 14. *And be it further enacted*, That every person who shall hereafter hold or exercise any office, civil or military, except offices merely ministerial, and military offices below the grade of colonel, in the rebel service, state or confederate, is hereby declared not to be a citizen of the United States.

No. 140. Electoral Count

February 8, 1865

A JOINT resolution declaring certain States not eligible to representation in the electoral college was presented in the House December 19, 1864, by Wilson of Iowa, and passed the House January 30, 1865. The resolution was reported in the Senate February 1, with an amendment to the preamble. An amendment to strike out Louisiana from the list of States named was rejected, and on the 4th, by a vote of 29 to 10, the amended resolution passed the Senate. The House concurred in the Senate amendment. In his message of approval, February 8, Lincoln disclaimed "all right of the Executive to interfere in any way in the matter of canvassing or counting electoral votes," and further disclaimed "that by signing said resolution he has expressed any opinion on the recitals of the preamble or any judgment of his own upon the subject of the resolution."

REFERENCES. — *Text* in *U. S. Statutes at Large*, XIII., 567, 568. For the proceedings see the *House and Senate Journals*, 38th Cong., 2d Sess., and the *Cong. Globe*.

Joint Resolution declaring certain States not entitled to Representation in the Electoral College.

WHEREAS the inhabitants and local authorities of the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Arkansas, and Tennessee rebelled against the government of the United States, and were in such condition on . . . [November 8, 1864,] . . . that no valid election for electors of President and Vice-President of the United States, according to the constitution and laws thereof, was held therein on said day: Therefore,

Be it resolved . . . , That the states mentioned in the preamble

to this joint resolution are not entitled to representation in the electoral college for the choice of President and Vice-President of the United States, for the term of office commencing . . . [March 4, 1865] . . . ; and no electoral votes shall be received or counted from said states concerning the choice of President and Vice-President for said term of office.

No. 141. Freedmen's Bureau

March 3, 1865

A BILL "to establish a bureau of emancipation" was reported in the House December 22, 1863, by Eliot of Massachusetts, from the Select Committee on Emancipation, and recommitted. The bill was reported with amendments January 13, 1864, and March 1 passed the House by a vote of 69 to 67. In the Senate the bill was referred to the Select Committee on Slavery and Freedmen, of which Sumner was chairman. A bill to establish a bureau of freedmen was reported from the committee April 12. May 25 the committee reported the House bill with a substitute amendment, and the bill thus amended passed the Senate June 29 by a vote of 21 to 9. The select committee of the House recommended that the amendments of the Senate be disagreed to. Further action was postponed until December. December 20 a conference committee was appointed. The report of the committee was accepted by the House February 9, 1865, by a vote of 64 to 62, 56 not voting, but rejected by the Senate on the 22d by a vote of 14 to 24. March 3 the report of a second conference committee was agreed to by both houses. An act of July 16, 1866, continued the act of 1865 in force until July 16, 1868, and enlarged the scope of the bureau.

REFERENCES. — *Text* in *U. S. Statutes at Large*, XIII., 507–509. For the proceedings see the *House and Senate Journals*, 38th Cong., 1st and 2d Sess., and the *Cong. Globe*. The supplementary act of 1866 is in MacDonald's *Select Statutes*, No. 51. On the work of the bureau see *Senate Exec. Doc.* 28, 38th Cong., 2d Sess.; *House Exec. Docs.* 11, 70, and 120, 39th Cong., 1st Sess.; *House Exec. Doc.* 7, 39th Cong., 2d Sess.; *House Report* 30, 40th Cong., 2d Sess.; *House Exec. Doc.* 329, *ibid.*; *House Exec. Doc.* 142, 41st Cong., 2d Sess.; *House Misc. Doc.* 87, 42d Cong., 3d Sess.; *House Exec. Doc.* 10, 43d Cong., 1st Sess.; *House Exec. Doc.* 144, 44th Cong., 1st Sess. On the condition of freedmen see *Senate Exec. Doc.* 53, and *Senate Report* 25, 38th Cong., 1st Sess.; *House Exec. Doc.* 118, 39th Cong., 1st Sess. Southern State legislation respecting freedmen is summarized in McPherson, *Reconstruction*, 29–44.

An Act to establish a Bureau for the Relief of Freedmen and Refugees.

Be it enacted . . . , That there is hereby established in the War Department, to continue during the present war of rebellion, and for one year thereafter, a bureau of refugees, freedmen, and abandoned lands, to which shall be committed, as hereinafter provided, the supervision and management of all abandoned lands, and the control of all subjects relating to refugees and freedmen from rebel states, or from any district of country within the territory embraced in the operations of the army, under such rules and regulations as may be prescribed by the head of the bureau and approved by the President. The said bureau shall be under the management and control of a commissioner to be appointed by the President, by and with the advice and consent of the Senate. . . .

SEC. 2. *And be it further enacted,* That the Secretary of War may direct such issues of provisions, clothing, and fuel, as he may deem needful for the immediate and temporary shelter and supply of destitute and suffering refugees and freedmen and their wives and children, under such rules and regulations as he may direct.

SEC. 3. *And be it further enacted,* That the President may, by and with the advice and consent of the Senate, appoint an assistant commissioner for each of the states declared to be in insurrection, not exceeding ten in number, who shall, under the direction of the commissioner, aid in the execution of the provisions of this act; . . . And any military officer may be detailed and assigned to duty under this act without increase of pay or allowances. . . .

SEC. 4. *And be it further enacted,* That the commissioner, under the direction of the President, shall have authority to set apart, for the use of loyal refugees and freedmen, such tracts of land within the insurrectionary states as shall have been abandoned, or to which the United States shall have acquired title by confiscation or sale, or otherwise, and to every male citizen, whether refugee or freedman, as aforesaid, there shall be assigned not more than forty acres of such land, and the person to whom it was so assigned shall be protected in the use and

enjoyment of the land for the term of three years at an annual rent not exceeding six per centum upon the value of such land, as it was appraised by the state authorities in the year eighteen hundred and sixty, for the purpose of taxation, and in case no such appraisal can be found, then the rental shall be based upon the estimated value of the land in said year, to be ascertained in such manner as the commissioner may by regulation prescribe. At the end of said term, or at any time during said term, the occupants of any parcels so assigned may purchase the land and receive such title thereto as the United States can convey, upon paying therefor the value of the land, as ascertained and fixed for the purpose of determining the annual rent aforesaid.

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No. 142. Freedom for Soldiers' Families

March 3, 1865

A BILL to secure the freedom of soldiers' families was introduced in the Senate December 13, 1864, by Wilson of Massachusetts, and passed that body January 9, 1865, notwithstanding strong opposition, by a vote of 27 to 10. The vote in the House, February 22, on the passage of the bill was 74 to 63, 45 not voting.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XIII., 571. For the proceedings see the *House and Senate Journals*, 38th Cong., 2d Sess., and the *Cong. Globe*. The important debate was in the Senate.

A Resolution to encourage Enlistments and to promote the Efficiency of the military Forces of the United States.

Resolved . . . , That, for the purpose of encouraging enlistments and promoting the efficiency of the military and naval forces of the United States, it is hereby enacted that the wife and children, if any he have, of any person that has been, or may be, mustered into the military or naval service of the United States, shall, from and after the passage of this act, be forever free, any law, usage, or custom whatsoever to the contrary notwithstanding . . .

No. 143. Proclamation appointing a Governor for North Carolina

May 29, 1865

THE appointment of military governors in the States lately in rebellion, and the reëstablishment of the State governments under their direction, were steps of primary importance in the plan of executive reconstruction proposed by President Johnson. Appointments similar to that in North Carolina were proclaimed June 13, for Mississippi; June 17, for Georgia and Texas; June 21, for Alabama; June 30, for South Carolina, and July 13, for Florida. An executive order of May 9 had declared the authority of the United States reëstablished in Virginia, directed the various departments of the national government to resume operations in that State, and promised federal aid to Governor Pierpont if necessary.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XIII., 760, 761. On Johnson's theory of reconstruction in this connection, see his annual message of December 4, 1865.

WHEREAS the fourth section of the fourth article of the Constitution of the United States declares that the United States shall guarantee to every state in the Union a republican form of government, and shall protect each of them against invasion and domestic violence; and whereas the President of the United States is, by the constitution, made commander-in-chief of the army and navy, as well as chief civil executive officer of the United States, and is bound by solemn oath faithfully to execute the office of President of the United States, and to take care that the laws be faithfully executed; and whereas the rebellion, which has been waged by a portion of the people of the United States against the properly constituted authorities of the government thereof, in the most violent and revolting form, but whose organized and armed forces have now been almost entirely overcome, has, in its revolutionary progress, deprived the people of the State of North Carolina of all civil government; and whereas it becomes necessary and proper to carry out and enforce the obligations of the United States to the people of North Carolina, in securing them in the enjoyment of a republican form of government:

Now, therefore, in obedience to the high and solemn duties

imposed upon me by the Constitution of the United States, and for the purpose of enabling the loyal people of said state to organize a state government, whereby justice may be established, domestic tranquillity insured, and loyal citizens protected in all their rights of life, liberty, and property, I, ANDREW JOHNSON, President of the United States, and commander-in-chief of the army and navy of the United States, do hereby appoint William W. Holden provisional governor of the State of North Carolina, whose duty it shall be, at the earliest practicable period, to prescribe such rules and regulations as may be necessary and proper for convening a convention, composed of delegates to be chosen by that portion of the people of said state who are loyal to the United States, and no others, for the purpose of altering or amending the constitution thereof; and with authority to exercise, within the limits of said state, all the powers necessary and proper to enable such loyal people of the State of North Carolina to restore said state to its constitutional relations to the federal government, and to present such a republican form of state government as will entitle the state to the guarantee of the United States therefor, and its people to protection by the United States against invasion, insurrection, and domestic violence; *Provided* that, in any election that may be hereafter held for choosing delegates to any state convention as aforesaid, no person shall be qualified as an elector, or shall be eligible as a member of such convention, unless he shall have previously taken and subscribed the oath of amnesty, as set forth in the President's Proclamation of May 29, A.D. 1865, and is a voter qualified as prescribed by the constitution and laws of the State of North Carolina in force immediately before the 20th day of May, A.D. 1861, the date of the so-called ordinance of secession; and the said convention, when convened, or the legislature that may be thereafter assembled, will prescribe the qualification of electors, and the eligibility of persons to hold office under the constitution and laws of the state, — a power the people of the several states composing the Federal Union have rightfully exercised from the origin of the government to the present time.

And I do hereby direct —

First. That the military commander of the department, and all officers and persons in the military or naval service, aid and

assist the said provisional governor in carrying into effect this Proclamation, and they be enjoined to abstain from, in any way, hindering, impeding, or discouraging the loyal people from the organization of a state government as herein authorized.

Second. That the Secretary of State proceed to put in force all laws of the United States, the administration whereof belongs to the State Department, applicable to the geographical limits aforesaid.

Third. That the Secretary of the Treasury proceed to nominate for appointment assessors of taxes, and collectors of customs and internal revenue, and such other officers of the Treasury Department as are authorized by law, and put in execution the revenue laws of the United States within the geographical limits aforesaid. In making appointments, the preference shall be given to qualified loyal persons residing within the districts where their respective duties are to be performed. But if suitable residents of the districts shall not be found, then persons residing in other states or districts shall be appointed.

Fourth. That the Postmaster-General proceed to establish post-offices and post-routes, and put into execution the postal laws of the United States within the said state, giving to loyal residents the preference of appointment; but if suitable residents are not found, then to appoint agents, &c., from other states.

Fifth. That the district judge for the judicial district in which North Carolina is included proceed to hold courts within said state, in accordance with the provisions of the act of congress. The Attorney-General will instruct the proper officers to libel, and bring to judgment, confiscation, and sale, property subject to confiscation, and enforce the administration of justice within said state in all matters within the cognizance and jurisdiction of the federal courts.

Sixth. That the Secretary of the Navy take possession of all public property belonging to the Navy Department within said geographical limits, and put in operation all acts of congress in relation to naval affairs having application to the said state.

Seventh. That the Secretary of the Interior put in force the laws relating to the Interior Department applicable to the geographical limits aforesaid.

No. 144. Thirteenth Amendment

December 18, 1865

JANUARY 11, 1864, John B. Henderson of Missouri offered in the Senate a joint resolution for an amendment to the Constitution providing that "slavery or involuntary servitude, except as a punishment for crime, shall not exist in the United States." February 8 Sumner proposed an amendment declaring that "everywhere within the limits of the United States, and of each State or Territory thereof, all persons are equal before the law, so that no person can hold another as a slave." Both of these resolutions were referred to the Committee on the Judiciary, which reported, February 10, a resolution proposing an amendment in the terms of the thirteenth amendment subsequently ratified. On the 15th the House, by a vote of 78 to 62, resolved in favor of an amendment abolishing slavery. The joint resolution passed the Senate April 8, by a vote of 38 to 6. The resolution was not taken up in the House until May 31, and June 15, by a vote of 95 to 66 (less than the required two-thirds), was rejected. January 31, 1865, the vote was reconsidered and the resolution passed, the vote being 121 to 24, 37 not voting. The ratification of the amendment by twenty-seven States was proclaimed December 18, 1865.

REFERENCES. — *Text* in *Revised Statutes of the United States* (ed. 1878), 30. For the proceedings in Congress see the *House and Senate Journals*, 38th Cong., 1st and 2d Sess., and the *Cong. Globe*. The principal propositions submitted are collected in McPherson, *Rebellion*, 255–259. On the scope of the amendment see *Slaughter House Cases*, 16 *Wallace*, 36.

ARTICLE XIII.

SEC. 1. Neither slavery nor involuntary servitude, save as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SEC. 2. Congress shall have power to enforce this article by appropriate legislation.

No. 145. First Civil Rights Act

April 9, 1866

A BILL "to protect all persons in the United States in their civil rights and furnish the means of their vindication" was introduced in the Senate January 5, 1866, by Lyman Trumbull of Illinois, and referred to the Committee on Judiciary. Amendments reported by the committee were agreed to on the

12th. February 1 an amendment submitted by Trumbull, regarding the citizenship of persons born in the United States, being the first part of section 1 of the act, was agreed to by a vote of 31 to 10, but the following day an amendment striking out the provision for the employment of military force was rejected, the vote being 12 to 24. The bill passed the Senate February 2, and the House, with further amendments, March 13, the vote in the House being 111 to 38, 34 not voting. The Senate agreed to the House amendments. March 27 President Johnson vetoed the bill. The bill was passed over the veto by the Senate, after a long discussion, April 6, by a vote of 33 to 15, and by the House April 9, by a vote of 132 to 41, 21 not voting.

REFERENCES — *Text* in *U.S. Statutes at Large*, XIV., 27–29. For the proceedings see the *House and Senate Journals*, 39th Cong., 1st Sess., and the *Cong. Globe*. The text of the Senate bill as reported by the committee is in the *Globe* for January 12. The veto message is in the *Globe* and the *Journals*. For a report of February 19, 1867, on violations of the act, see *Senate Exec. Doc.* 29, 39th Cong., 2d Sess.; for State laws relating to freedmen see *Senate Exec. Doc.* 6, *ibid.*

An Act to protect all Persons in the United States in their Civil Rights, and furnish the Means of their Vindication.

Be it enacted . . . , That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding.

SEC. 2. *And be it further enacted*, That any person who, under color of any law, statute, ordinance, regulation, or custom, shall subject, or cause to be subjected, any inhabitant of any State or Territory to the deprivation of any right secured or protected by this act, or to different punishment, pains, or penalties on account of such person having at any time been held in a condition of slavery or involuntary servitude, except as a punish-

ment for crime whereof the party shall have been duly convicted, or by reason of his color or race, than is prescribed for the punishment of white persons, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or both, in the discretion of the court.

SEC. 3. *And be it further enacted*, That the district courts of the United States, within their respective districts, shall have, exclusively of the courts of the several States, cognizance of all crimes and offences committed against the provisions of this act, and also, concurrently with the circuit courts of the United States, of all causes, civil and criminal, affecting persons who are denied or cannot enforce in the courts or judicial tribunals of the State or locality where they may be any of the rights secured to them by the first section of this act. . . . The jurisdiction in civil and criminal matters hereby conferred on the district and circuit courts of the United States shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where such laws are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offences against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of the cause, civil or criminal, is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern said courts in the trial and disposition of such cause, and, if of a criminal nature, in the infliction of punishment on the party found guilty.

SEC. 4. *And be it further enacted*, That the district attorneys, marshals, and deputy marshals of the United States, the commissioners appointed by the circuit and territorial courts of the United States, with powers of arresting, imprisoning, or bailing offenders against the laws of the United States, the officers and agents of the Freedmen's Bureau, and every other officer who may be specially empowered by the President of the United States, shall be, and they are hereby, specially authorized and required, at the expense of the United States, to institute proceedings against all and every person who shall

violate the provisions of this act, and cause him or them to be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States or territorial court as by this act has cognizance of the offence. And with a view to affording reasonable protection to all persons in their constitutional rights of equality before the law, without distinction of race or color, or previous condition of slavery or involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, and to the prompt discharge of the duties of this act, it shall be the duty of the circuit courts of the United States and the superior courts of the Territories of the United States, from time to time, to increase the number of commissioners, so as to afford a speedy and convenient means for the arrest and examination of persons charged with a violation of this act . . .

* * * * * * * *

Sec. 8. *And be it further enacted*, That whenever the President of the United States shall have reason to believe that offences have been or are likely to be committed against the provisions of this act within any judicial district, it shall be lawful for him, in his discretion, to direct the judge, marshal, and district attorney of such district to attend at such place within the district, and for such time as he may designate, for the purpose of the more speedy arrest and trial of persons charged with a violation of this act; and it shall be the duty of every judge or other officer, when any such requisition shall be received by him, to attend at the place and for the time therein designated.

Sec. 9. *And be it further enacted*, That it shall be lawful for the President of the United States, or such person as he may empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia, as shall be necessary to prevent the violation and enforce the due execution of this act.

Sec. 10. *And be it further enacted*, That upon all questions of law arising in any cause under the provisions of this act a final appeal may be taken to the Supreme Court of the United States.

No. 146. Restoration of Tennessee

July 24, 1866

A BILL to restore Tennessee, accompanied by certain testimony and other papers, was reported in the House March 5, 1866, by Bingham of Ohio, from the Joint Select Committee on Reconstruction, and recommitted. It was taken up July 19, and agreed to on the 20th, the vote on the preamble being 86 to 48, 48 not voting, and on the resolution 126 to 12, 45 not voting. In the Senate an amendment proposed by Sumner, providing that there should be no denial of equal legal rights on account of race or color, was rejected, 4 to 34, and an amended preamble agreed to, the latter vote being 23 to 20. The amendments to the resolution were agreed to by the House July 23, without a division, and the amendment to the preamble by a vote of 93 to 26, 62 not voting.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XIV., 364. For the proceedings see the *House and Senate Journals*, 39th Cong., 1st Sess., and the *Cong. Globe*. The majority and minority reports of March 5 and 6 are *House Reports* 29 and 30. In the history of the act the evolution of the preamble is particularly important.

Joint Resolution restoring Tennessee to her Relations to the Union.

WHEREAS, in the year eighteen hundred and sixty-one, the government of the State of Tennessee was seized upon and taken possession of by persons in hostility to the United States, and the inhabitants of said State in pursuance of an act of Congress were declared to be in a state of insurrection against the United States; and whereas said State government can only be restored to its former political relations in the Union by the consent of the law-making power of the United States; and whereas the people of said State did, on . . . [February 22, 1865] . . . , by a large popular vote, adopt and ratify a constitution of government whereby slavery was abolished, and all ordinances and laws of secession and debts contracted under the same were declared void; and whereas a State government has been organized under said constitution which has ratified the amendment to the Constitution of the United States abolishing slavery, also the amendment proposed by the thirty-ninth Congress, and has done other acts proclaiming and denoting loyalty; Therefore,

Be it resolved . . . , That the State of Tennessee is hereby restored to her former proper, practical relations to the Union,

and is again entitled to be represented by senators and representatives in Congress.

No. 147. Franchise in the District of Columbia

January 8, 1867

A BILL to regulate the elective franchise in the District of Columbia was introduced in the Senate December 4, 1865, by Wade of Ohio, and reported with amendments on the 20th. January 10, 1866, the bill was recommitted, and on the 12th again reported with an amendment. It was not taken up until June 28, when further consideration was postponed until December. The bill was taken up December 10, and on the 13th passed the Senate, the vote being 32 to 13. On the 14th the bill passed the House by a vote of 127 to 46, 18 not voting. January 7, 1867, President Johnson vetoed the bill. The bill was passed over the veto by the Senate on the 7th, by a vote of 29 to 10, and by the House on the 8th, by a vote of 112 to 38, 41 not voting.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XIV., 375, 376. For the proceedings see the *House and Senate Journals*, 39th Cong., 2d Sess., and the *Cong. Globe*. A minority report in the House, December 19, 1865, is *House Report* 2, 39th Cong., 1st Sess.

AN ACT to regulate the elective franchise in the District of Columbia.

Be it enacted . . . , That, from and after the passage of this act, each and every male person, excepting paupers and persons under guardianship, of the age of twenty-one years and upwards, who has not been convicted of any infamous crime or offence, and excepting persons who may have voluntarily given aid and comfort to the rebels in the late rebellion, and who shall have been born or naturalized in the United States, and who shall have resided in the said District for the period of one year, and three months in the ward or election precinct in which he shall offer to vote next preceding any election therein, shall be entitled to the elective franchise, and shall be deemed an elector and entitled to vote at any election in said District, without any distinction on account of color or race.

* * * * * * * *

No. 148. Elective Franchise in the Territories

January 31, 1867

A BILL to amend the organic acts of the several Territories was introduced in the House April 24, 1866, by James M. Ashley of Ohio, and referred to the Committee on Territories. The bill was reported without amendment on the 26th, recommitted, and again reported May 3. A substitute offered by Ashley May 15, the ninth section of which prohibited the denial of the elective franchise on account of race or color, was agreed to by a vote of 79 to 43, 61 not voting, a motion to strike out the ninth section being defeated by a vote of 36 to 76, 72 not voting. The bill was reported with amendments in the Senate May 31, but went over until the next session. January 10, 1867, a substitute in the words of the act following, offered by Wade of Ohio, was agreed to. The Senate amendment was accepted by the House by a vote of 104 to 38, 49 not voting. The bill became a law without the President's approval.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XIV., 379. For the proceedings see the *House and Senate Journals*, 39th Cong., 1st and 2d Sess., and the *Cong. Globe*. An abstract of the House bill of May 3 is in the *Globe* for that date; Ashley's substitute, *ibid.*, May 15.

An Act to regulate the elective Franchise in the Territories of the United States.

Be it enacted . . ., That from and after the passage of this act, there shall be no denial of the elective franchise in any of the Territories of the United States, now, or hereafter to be organized, to any citizen thereof, on account of race, color, or previous condition of servitude; and all acts or parts of acts, either of Congress or the Legislative Assemblies of said Territories, inconsistent with the provisions of this act are hereby declared null and void.

No. 149. First Reconstruction Act

March 2, 1867

THE question of the restoration of the insurrectionary States to a place in the Union early engaged the attention of Congress, and many resolutions setting forth the opinions of their framers as to the way in which such restoration should be brought about, were submitted. A concurrent resolution

of March 2, 1866, declared "that, in order to close agitation upon a question which seems likely to disturb the action of the government, as well as to quiet the uncertainty which is agitating the minds of the people of the eleven States which have been declared to be in rebellion, no senator or representative shall be admitted into either branch of Congress from any of said States until Congress shall have declared such State entitled to such representation." The majority report of the Joint Committee on Reconstruction was submitted June 18, 1866, and the minority report four days later. A bill to reconstruct North Carolina was introduced by Thaddeus Stevens December 13. February 6, 1867, however, Stevens reported from the joint committee a general reconstruction bill. On the 13th a substitute offered by Stevens was agreed to, and the bill passed the House, the vote being 109 to 55, 26 not voting. An amendment submitted by James G. Blaine of Maine, providing that when Congress should have approved the Constitution of any State conferring suffrage in accordance with the Fourteenth Amendment, the other sections of the bill should become inoperative, was rejected. In the meantime the Fourteenth Amendment had been rejected by all the seceding States except Tennessee. The Blaine amendment, offered by Sherman in the Senate, was accepted by that house, and the amended bill passed, February 16, by a vote of 29 to 10. On the 19th the House, by a vote of 73 to 98, refused to concur, but the next day receded from its disagreement, and concurred in the amendments of the Senate, with the addition of amendments embracing section 6 and the proviso of section 5 of the act as passed. The bill was vetoed by President Johnson March 2, but was promptly passed over the veto the same day, the vote in the House being 138 to 51, 3 not voting, and in the Senate 35 to 11. An act of January 22 had provided "for the meeting of the fortieth and all succeeding Congresses immediately after the adjournment of the preceding Congress," while another act of February 21 directed the clerk of the House to include in the roll of representatives for the next Congress members from those States only which had been represented in the preceding Congress. A joint resolution of March 30 appropriated $500,000 for the expenses of executing the various reconstruction acts.

References. — *Text* in *U.S. Statutes at Large*, XIV., 428, 429. For the proceedings see the *House and Senate Journals*, 39th Cong., 2d Sess., and the *Cong. Globe*. The bill reported February 6 is the same as the act as passed, except the fifth and sixth sections, which were added as amendments. For the texts of the more important resolutions on reconstruction, with the action upon them, see McPherson, *Reconstruction*, 109–114, 183–187. Johnson's message of July 20, 1867, transmitting a report of a cabinet meeting, is in Richardson, *Messages and Papers of the Presidents*, VI., 527–531. The documentary literature is extensive. The report of the Joint Committee on Reconstruction is *House Report* 30, 39th Cong., 1st Sess. On the early disturbances in the South see *House Exec. Doc.* 96 and *House Report* 101, 39th Cong., 1st Sess.; *House Exec. Docs.* 61, 68, *and* 72 and *House Report* 16, 39th Cong., 2d Sess. The most important orders, etc., relating to military reconstruction, are in *Senate Exec. Doc.* 14, 40th Cong., 1st Sess.; see also *Senate Exec. Doc.* 14, and *Senate Report* 14, 38th Cong., 1st Sess.; *House Report* 23, 39th Cong.

2d Sess.; *House Exec. Doc.* 342, 40th Cong., 2d Sess. The State constitutions of the reconstruction period are in Poore, *Charters and Constitutions.* On political conditions see *House Exec. Doc.* 131, *Senate Exec. Doc.* 43, *Senate Misc. Doc.* 62, and *Senate Report* 112, 39th Cong., 1st Sess.; *House Exec. Docs.* 20 *and* 34 and *House Misc. Docs.* 29 *and* 53, 40th Cong., 1st Sess.; *House Exec. Docs.* 53 *and* 276 and *Senate Exec. Doc.* 53, 40th Cong., 2d Sess.; *Senate Exec. Doc.* 13, 41st Cong., 2d Sess. On the constitutional question see particularly *Mississippi v. Johnson,* 4 *Wallace,* 475; *Georgia v. Stanton,* 6 *ibid.,* 51; *Texas v. White,* 7 *ibid.,* 200.

An Act to provide for the more efficient Government of the Rebel States.

WHEREAS no legal State governments or adequate protection for life or property now exists in the rebel States of Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas, and Arkansas; and whereas it is necessary that peace and good order should be enforced in said States until loyal and republican State governments can be legally established: Therefore,

Be it enacted . . . , That said rebel States shall be divided into military districts and made subject to the military authority of the United States as hereinafter prescribed, and for that purpose Virginia shall constitute the first district; North Carolina and South Carolina the second district; Georgia, Alabama, and Florida the third district; Mississippi and Arkansas the fourth district; and Louisiana and Texas the fifth district.

SEC. 2. *And be it further enacted,* That it shall be the duty of the President to assign to the command of each of said districts an officer of the army, not below the rank of brigadier-general, and to detail a sufficient military force to enable such officer to perform his duties and enforce his authority within the district to which he is assigned.

SEC. 3. *And be it further enacted,* That it shall be the duty of each officer assigned as aforesaid, to protect all persons in their rights of person and property, to suppress insurrection, disorder, and violence, and to punish, or cause to be punished, all disturbers of the public peace and criminals; and to this end he may allow local civil tribunals to take jurisdiction of and to try offenders, or, when in his judgment it may be necessary for the trial of offenders, he shall have power to

organize military commissions or tribunals for that purpose, and all interference under color of State authority with the exercise of military authority under this act, shall be null and void.

SEC. 4. *And be it further enacted*, That all persons put under military arrest by virtue of this act shall be tried without unnecessary delay, and no cruel or unusual punishment shall be inflicted, and no sentence of any military commission or tribunal hereby authorized, affecting the life or liberty of any person, shall be executed until it is approved by the officer in command of the district, and the laws and regulations for the government of the army shall not be affected by this act, except in so far as they conflict with its provisions: *Provided*, That no sentence of death under the provisions of this act shall be carried into effect without the approval of the President.

SEC. 5. *And be it further enacted*, That when the people of any one of said rebel States shall have formed a constitution of government in conformity with the Constitution of the United States in all respects, framed by a convention of delegates elected by the male citizens of said State, twenty-one years old and upward, of whatever race, color, or previous condition, who have been resident in said State for one year previous to the day of such election, except such as may be disfranchised for participation in the rebellion or for felony at common law, and when such constitution shall provide that the elective franchise shall be enjoyed by all such persons as have the qualifications herein stated for electors of delegates, and when such constitution shall be ratified by a majority of the persons voting on the question of ratification who are qualified as electors for delegates, and when such constitution shall have been submitted to Congress for examination and approval, and Congress shall have approved the same, and when said State, by a vote of its legislature elected under said constitution, shall have adopted the amendment to the Constitution of the United States, proposed by the Thirty-ninth Congress, and known as article fourteen, and when said article shall have become a part of the Constitution of the United States said State shall be declared entitled to representation in Congress, and senators and representatives shall be admitted therefrom on their taking the oath prescribed

by law, and then and thereafter the preceding sections of this act shall be inoperative in said State: *Provided*, That no person excluded from the privilege of holding office by said proposed amendment to the Constitution of the United States, shall be eligible to election as a member of the convention to frame a constitution for any of said rebel States, nor shall any such person vote for members of such convention.

SEC. 6. *And be it further enacted*, That, until the people of said rebel States shall be by law admitted to representation in the Congress of the United States, any civil governments which may exist therein shall be deemed provisional only, and in all respects subject to the paramount authority of the United States at any time to abolish, modify, control, or supersede the same; and in all elections to any office under such provisional governments all persons shall be entitled to vote, and none others, who are entitled to vote, under the provisions of the fifth section of this act; and no persons shall be eligible to any office under any such provisional governments who would be disqualified from holding office under the provisions of the third *article* of said constitutional amendment.

No. 150. Tenure of Office Act

March 2, 1867

A BILL "to regulate the tenure of offices" was introduced in the Senate December 3, 1866, the first day of the session, by George H. Williams of Oregon, and referred to the Joint Select Committee on Retrenchment. On the 10th a substitute amendment was reported by George F. Edmunds of Vermont, who also offered the next day a further amendment, being the last five sections of the act. The amended bill passed the Senate on the 18th by a vote of 29 to 9, 14 not voting. The House, by a vote of 82 to 63, 46 not voting, added an amendment striking out the clause excepting cabinet officers from the operation of the act, the vote on the passage of the amended bill being 111 to 38, 42 not voting. The Senate refused to concur, but the insistence of the House on its principal amendment forced the Senate to agree to the compromise contained in the first section of the act. The report of the conference committee was accepted by the Senate February 18, by a vote of 22 to 10, and by the House the following day by a vote of 112 to 41, 37 not voting. March 2 the bill was vetoed by President Johnson, but was passed over the veto the same day, the vote in the Senate being 35 to 11, 6 not vot-

ing, and in the House 138 to 51, 3 not voting. Sections 1 and 2 of the act were repealed by an act of April 5, 1869, and the remainder by an act of March 3, 1887.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XIV., 430–432. For the proceedings see the *House and Senate Journals*, 39th Cong., 2d Sess., and the *Cong. Globe*. See also *Senate Exec. Doc.* 9, 40th Cong., Special Sess.

An Act regulating the Tenure of certain Civil Offices.

Be it enacted . . . , That every person holding any civil office to which he has been appointed by and with the advice and consent of the Senate, and every person who shall hereafter be appointed to any such office, and shall become duly qualified to act therein, is, and shall be entitled to hold such office until a successor shall have been in like manner appointed and duly qualified, except as herein otherwise provided: *Provided*, That the Secretaries of State, of the Treasury, of War, of the Navy, and of the Interior, the Postmaster-General, and the Attorney-General, shall hold their offices respectively for and during the term of the President by whom they may have been appointed and for one month thereafter, subject to removal by and with the advice and consent of the Senate.

SEC. 2. *And be it further enacted*, That when any officer appointed as aforesaid, excepting judges of the United States courts, shall, during a recess of the Senate, be shown, by evidence satisfactory to the President, to be guilty of misconduct in office, or crime, or for any reason shall become incapable or legally disqualified to perform its duties, in such case, and in no other, the President may suspend such officer and designate some suitable person to perform temporarily the duties of such office until the next meeting of the Senate, and until the case shall be acted upon by the Senate . . . ; and in such case it shall be the duty of the President, within twenty days after the first day of such next meeting of the Senate, to report to the Senate such suspension, with the evidence and reasons for his action in the case, and the name of the person so designated to perform the duties of such office. And if the Senate shall concur in such suspension and advise and consent to the removal of such officer, they shall so certify to the President, who may thereupon remove such officer, and, by and with the advice and consent of the Senate, appoint another person to such

office. But if the Senate shall refuse to concur in such suspension, such officer so suspended shall forthwith resume the functions of his office, and the powers of the person so performing its duties in his stead shall cease, and the official salary and emoluments of such officer shall, during such suspension, belong to the person so performing the duties thereof, and not to the officer so suspended. . . .

SEC. 3. *And be it further enacted*, That the President shall have power to fill all vacancies which may happen during the recess of the Senate, by reason of death or resignation, by granting commissions which shall expire at the end of their next session thereafter. And if no appointment, by and with the advice and consent of the Senate, shall be made to such office so vacant or temporarily filled as aforesaid during such next session of the Senate, such office shall remain in abeyance, without any salary, fees, or emoluments attached thereto, until the same shall be filled by appointment thereto, by and with the advice and consent of the Senate; and during such time all the powers and duties belonging to such office shall be exercised by such other officer as may by law exercise such powers and duties in case of a vacancy in such office.

SEC. 4. *And be it further enacted*, That nothing in this act contained shall be construed to extend the term of any office the duration of which is limited by law.

SEC. 5. *And be it further enacted*, That if any person shall, contrary to the provisions of this act, accept any appointment to or employment in any office, or shall hold or exercise or attempt to hold or exercise, any such office or employment, he shall be deemed, and is hereby declared to be, guilty of a high misdemeanor, and, upon trial and conviction thereof, he shall be punished therefor by a fine not exceeding ten thousand dollars, or by imprisonment not exceeding five years, or both said punishments, in the discretion of the court.

SEC. 6. *And be it further enacted*, That every removal, appointment, or employment, made, had, or exercised, contrary to the provisions of this act, and the making, signing, sealing, countersigning, or issuing of any commission or letter of authority for or in respect to any such appointment or employment, shall be deemed, and are hereby declared to be, high misdemeanors,

and, upon trial and conviction thereof, every person guilty thereof shall be punished by a fine not exceeding ten thousand dollars, or by imprisonment not exceeding five years, or both said punishments, in the discretion of the court. . . .

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No. 151. Command of the Army

March 2, 1867

SECTION 2 of the army appropriation act of March 2, 1867, virtually deprived the President, in certain cases, of the command of the army. The constitutionality of the provision was debated at some length, but an amendment offered in the Senate February 26, by Reverdy Johnson of Maryland, to strike out the section was lost by a vote of 8 to 28, and other motions to the same effect failed of support. Sections 5 and 6 were added to the bill by the Senate. President Johnson approved the bill in order not to defeat the appropriations, but he entered his protest against the army provision. The section relating to the militia was repealed by acts of January 14 and March 3, 1869.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XIV., 486, 487. For the proceedings see the *House and Senate Journals*, 39th Cong., 2d Sess., and the *Cong. Globe*. The important discussion was in the Senate.

An Act making appropriations for the support of the army for the year ending . . . [June 30, 1868] . . . , *and for other purposes.*

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SEC. 2. *And be it further enacted*, That the headquarters of the General of the army of the United States shall be at the city of Washington, and all orders and instructions relating to military operations issued by the President or Secretary of War shall be issued through the General of the army, and, in case of his inability, through the next in rank. The General of the army shall not be removed, suspended, or relieved from command, or assigned to duty elsewhere than at said headquarters, except at his own request, without the previous approval of the Senate; and any orders or instructions relating to military operations issued contrary to the requirements of this section shall be null and void; and any officer who shall issue orders or instructions contrary to the provisions of this section shall be

deemed guilty of a misdemeanor in office; and any officer of the army who shall transmit, convey, or obey any orders or instructions so issued contrary to the provisions of this section, knowing that such orders were so issued, shall be liable to imprisonment for not less than two nor more than twenty years, upon conviction thereof in any court of competent jurisdiction.

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No. 152. Second Reconstruction Act

March 23, 1867

By a resolution of March 7, 1867, the House Committee on the Judiciary were instructed "to report a bill declaring who shall call conventions for the reorganization of the rebel States, and providing for the registration of voters within said rebel States, and all elections for members of said conventions, or for the adoption or rejection of constitutions formed by said conventions, or for the choice of public officers, State and municipal, until the constitutions of said States shall have been approved by Congress, shall be by ballot." A bill in accordance with the resolution was reported March 11, and passed the same day, the vote being 117 to 27, 16 not voting. The Senate Committee on the Judiciary reported a substitute, which, with further amendments, passed that body on the 16th by a vote of 38 to 2. To the bill as thus amended the House added further amendments, the principal of which required the approval by a majority of the registered voters of the constitution submitted for ratification. The bill received its final form from a conference committee. March 23 President Johnson vetoed the bill, but it was passed over the veto the same day, in the House by a vote of 114 to 25, 25 not voting, and in the Senate by a vote of 40 to 7.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XV., 2–4. For the proceedings see the *House and Senate Journals*, 40th Cong., 1st Sess., and the *Cong. Globe*. The texts of the numerous amendments submitted are in the *Globe*.

An Act supplementary to an Act entitled "An Act to provide for the more efficient Government of the Rebel States," passed . . . [March 2, 1867] . . . *, and to facilitate Restoration.*

Be it enacted . . . , That before . . . [September 1, 1867] . . . , the commanding general in each district defined by . . . [the act of March 2, 1867] . . . , shall cause a registration to be made of the male citizens of the United States, twenty-one years of age

and upwards, resident in each county or parish in the State or States included in his district, which registration shall include only those persons who are qualified to vote for delegates by the act aforesaid, and who shall have taken and subscribed the following oath or affirmation: "I, ——, do solemnly swear (or affirm), in the presence of Almighty God, that I am a citizen of the State of ——; that I have resided in said State for —— months next preceding this day, and now reside in the county of ——, or the parish of ——, in said State (as the case may be); that I am twenty-one years old; that I have not been disfranchised for participation in any rebellion or civil war against the United States, or for felony committed against the laws of any State or of the United States; that I have never been a member of any State legislature, nor held any executive or judicial office in any State, and afterwards engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that I have never taken an oath as a member of Congress of the United States, or as an officer of the United States. or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, and afterwards engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that I will faithfully support the Constitution and obey the laws of the United States, and will, to the best of my ability, encourage others so to do, so help me God." . . .

Sec. 2. *And be it further enacted*, That after the completion of the registration hereby provided for in any State, at such time and places therein as the commanding general shall appoint and direct, of which at least thirty days' public notice shall be given, an election shall be held of delegates to a convention for the purpose of establishing a constitution and civil government for such State loyal to the Union, said convention in each State, except Virginia, to consist of the same number of members as the most numerous branch of the State legislature of such State . . . [in 1860] . . . , to be apportioned among the several districts, counties, or parishes of such State by the commanding general, giving to each representation in the ratio of voters registered as aforesaid as nearly as may be. The convention in Virginia shall consist of the same number of members as represented

the territory now constituting Virginia in the most numerous branch of the legislature of said State . . . [in 1860] . . . , to be apportioned as aforesaid.

SEC. 3. *And be it further enacted*, That at said election the registered voters of each State shall vote for or against a convention to form a constitution therefor under this act. . . . If a majority of the votes given on that question shall be for a convention, then such convention shall be held as hereinafter provided; but if a majority of said votes shall be against a convention, then no such convention shall be held under this act: *Provided*, That such convention shall not be held unless a majority of all such registered voters shall have voted on the question of holding such convention.

SEC. 4. *And be it further enacted*, That the commanding general of each district shall appoint as many boards of registration as may be necessary, consisting of three loyal officers or persons, to make and complete the registration, superintend the election, and make return to him of the votes, lists of voters, and of the persons elected as delegates by a plurality of the votes cast at said election; and upon receiving said returns he shall open the same, ascertain the persons elected as delegates, according to the returns of the officers who conducted said election, and make proclamation thereof; and if a majority of the votes given on that question shall be for a convention, the commanding general, within sixty days from the date of election, shall notify the delegates to assemble in convention, at a time and place to be mentioned in the notification, and said convention, when organized, shall proceed to frame a constitution and civil government according to the provisions of this act, and the act to which it is supplementary; and when the same shall have been so framed, said constitution shall be submitted by the convention for ratification to the persons registered under the provisions of this act at an election to be conducted by the officers or persons appointed or to be appointed by the commanding general, as hereinbefore provided, and to be held after the expiration of thirty days from the date of notice thereof, to be given by said convention; and the returns thereof shall be made to the commanding general of the district.

SEC. 5. *And be it further enacted*, That if, according to said

returns, the constitution shall be ratified by a majority of the votes of the registered electors qualified as herein specified, cast at said election, at least one half of all the registered voters voting upon the question of such ratification, the president of the convention shall transmit a copy of the same, duly certified, to the President of the United States, who shall forthwith transmit the same to Congress . . . ; and if it shall moreover appear to Congress that the election was one at which all the registered and qualified electors in the State had an opportunity to vote freely and without restraint, fear, or the influence of fraud, and if the Congress shall be satisfied that such constitution meets the approval of a majority of all the qualified electors in the State, and if the said constitution shall be declared by Congress to be in conformity with the provisions of the act to which this is supplementary, and the other provisions of said act shall have been complied with, and the said constitution shall be approved by Congress, the State shall be declared entitled to representation, and senators and representatives shall be admitted therefrom as therein provided.

* * * * * * * *

No. 153. Treaty with Russia for the Cession of Alaska

March 30, 1867

By the fourth article of the treaty of 1824 between the United States and Russia, it was agreed that for ten years the vessels of both powers might fish and trade in the interior waters on the northwest coast of North America, both north and south of 54° 40′. Negotiations for the continuance of the agreement failed, and the encroachments of American seamen in Russian territory were from time to time the subject of diplomatic correspondence. The friendly behavior of Russia towards the United States during the Civil War, though joined, doubtless, with an unwillingness on the part of the United States to see the power of Russia in North America increase, led to an acceptance of the offer of Russia to sell Alaska. The treaty was communicated to the Senate July 16, 1867, and the formal transfer of the territory was made October 18. Copies of the treaty and correspondence were laid before the House February 17, 1868. The debate in the House raised the question of the constitutional relation of the House to treaties involving the appropria-

tion of money. The preamble of the bill making the appropriation, as it passed the House, asserted that the consent of that body was necessary to the ratification of such treaties. The Senate refused to accept the bill in that form, and the preamble was modified. The appropriation bill became law July 27. Another act of the same date extended the laws of the United States relating to customs, commerce, and navigation over Alaska, and established it as a collection district.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XV., 539–543. For the documents and correspondence see *Senate Exec. Doc.* 17, 40th Cong., 1st Sess ; *House Exec. Docs.* 125 *and* 177, 40th Cong., 2d Sess. Banks's report in favor of ratification is *House Report* 37, 40th Cong., 2d Sess. For the House proceedings see the *Cong. Globe*, 40th Cong., 2d Sess.

* * * * * * * *

ARTICLE I.

His Majesty the Emperor of all the Russias agrees to cede to the United States . . . all the territory and dominion now possessed by his said Majesty on the continent of America and in the adjacent islands, the same being contained within the geographical limits herein set forth, to wit: The eastern limit is the line of demarcation between the Russian and the British possessions in North America, as established by the convention between Russia and Great Britain, of February 28–16, 1825, and described in Articles III and IV of said convention, in the following terms:

"Commencing from the southernmost point of the island called Prince of Wales Island, which point lies in the parallel of 54 degrees 40 minutes north latitude, and between the 131st and 133d degree of west longitude, (meridian of Greenwich,) the said line shall ascend to the north along the channel called Portland Channel, as far as the point of the continent where it strikes the 56th degree of north latitude; from this last-mentioned point, the line of demarcation shall follow the summit of the mountains situated parallel to the coast, as far as the point of intersection of the 141st degree of west longitude, (of the same meridian;) and finally, from the said point of intersection, the said meridian line of the 141st degree, in its prolongation as far as the Frozen Ocean.

"IV. With reference to the line of demarcation laid down in the preceding article, it is understood —

"1st. That the island called Prince of Wales Island shall

belong wholly to Russia," (now, by this cession to the United States.)

"2d. That whenever the summit of the mountains which extend in a direction parallel to the coast from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude shall prove to be at the distance of more than ten marine leagues from the ocean, the limit between the British possessions and the line of coast which is to belong to Russia as above mentioned, (that is to say, the limit to the possessions ceded by this convention,) shall be formed by a line parallel to the winding of the coast, and which shall never exceed the distance of ten marine leagues therefrom."

The western limit within which the territories and dominion conveyed are contained passes through a point in Behring's Straits on the parallel of sixty-five degrees thirty minutes north latitude, at its intersection by the meridian which passes midway between the islands of Krusenstern or Ignalook, and the island of Ratmanoff, or Noonarbook, and proceeds due north without limitation, into the same Frozen Ocean. The same western limit, beginning at the same initial point, proceeds thence in a course nearly southwest, through Behring's Straits and Behring's Sea, so as to pass midway between the northwest point of the island of St. Lawrence and the southeast point of Cape Choukotski, to the meridian of one hundred and seventy-two west longitude; thence, from the intersection of that meridian, in a southwesterly direction, so as to pass midway between the island of Attou and the Copper Island of the Kormandorski couplet or group, in the North Pacific Ocean, to the meridian of one hundred and ninety-three degrees west longitude, so as to include in the territory conveyed the whole of the Aleutian Islands east of that meridian.

* * * * * * * *

Article III.

The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years; but if they should prefer to remain in the ceded territory, they, with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advan-

tages, and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property, and religion. The uncivilized tribes will be subject to such laws and regulations as the United States may from time to time adopt in regard to aboriginal tribes of that country.

* * * * * * * *

ARTICLE VI.

In consideration of the cession aforesaid, the United States agree to pay at the Treasury in Washington, within ten months after the exchange of the ratifications of this convention, to the diplomatic representative or other agent of His Majesty the Emperor of all the Russias, duly authorized to receive the same, seven million two hundred thousand dollars in gold. . . .

* * * * * * * *[1]

No. 154. Third Reconstruction Act

July 19, 1867

THE difficulties encountered by the military commanders in enforcing the acts of March 2 and 23, 1867, especially in regard to the oath prescribed in the second of the two acts, led to the issue on June 20, through the Adjutant General's office, and with the approval of all the members of the Cabinet except Stanton, of instructions setting forth the view of the Executive as to the meaning and scope of the acts in question. From the standpoint of Congress, the instructions were a serious limitation on the effectiveness of the acts. A bill to interpret and give effect to the reconstruction acts of March 2 and 23 was reported in the Senate July 8, by Trumbull of Illinois, from the Committee on the Judiciary, but was laid aside on the 11th in favor of a bill of similar purport which had passed the House. The Senate then substituted its own bill for the House bill, the bill in this form passing by a vote of 32 to 6. The bill received its final form from a conference committee. July 19 President Johnson vetoed the bill, but it was at once passed over the veto, in the House by a vote of 109 to 25, 37 not voting, and in the Senate by a vote of 30 to 6. A joint resolution of the same date appropriated $1,000,000 to carry into effect the reconstruction acts.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XV., 14–16. For the proceedings see the *House and Senate Journals*, 40th Cong., 1st Sess., and the

[1] Signed: "William H. Seward, Edouard de Stoeckl." — ED.

Cong. Globe. For the opinions of Attorney General Stanbery, May 24 and June 12, see *Senate Exec. Doc.* 14, 40th Cong., 1st Sess. The executive instructions of June 20 are in Richardson, *Messages and Papers of the Presidents*, VI., 552–556.

An Act supplementary to an Act entitled "An Act to provide for the more efficient Government of the Rebel States," passed . . . [March 2, 1867] . . . , *and the Act supplementary thereto, passed . . .* [March 23, 1867].

Be it enacted . . . , That it is hereby declared to have been the true intent and meaning . . . [of the acts of March 2 and March 23, 1867] . . . , that the governments then existing in the rebel States of Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas, and Arkansas were not legal State governments; and that thereafter said governments, if continued, were to be continued subject in all respects to the military commanders of the respective districts, and to the paramount authority of Congress.

Sec. 2. *And be it further enacted*, That the commander of any district named in said act shall have power, subject to the disapproval of the General of the army of the United States, and to have effect till disapproved, whenever in the opinion of such commander the proper administration of said act shall require it, to suspend or remove from office, or from the performance of official duties and the exercise of official powers, any officer or person holding or exercising, or professing to hold or exercise, any civil or military office or duty in such district under any power, election, appointment or authority derived from, or granted by, or claimed under, any so-called State or the government thereof, or any municipal or other division thereof, and upon such suspension or removal such commander, subject to the disapproval of the General as aforesaid, shall have power to provide from time to time for the performance of the said duties of such officer or person so suspended or removed, by the detail of some competent officer or soldier of the army, or by the appointment of some other person, to perform the same, and to fill vacancies occasioned by death, resignation, or otherwise.

Sec. 3. *And be it further enacted*, That the General of the army of the United States shall be invested with all the powers

of suspension, removal, appointment, and detail granted in the preceding section to district commanders.

SEC. 4. *And be it further enacted*, That the acts of the officers of the army already done in removing in said districts persons exercising the functions of civil officers, and appointing others in their stead, are hereby confirmed: *Provided*, That any person heretofore or hereafter appointed by any district commander to exercise the functions of any civil office, may be removed either by the military officer in command of the district, or by the General of the army. And it shall be the duty of such commander to remove from office as aforesaid all persons who are disloyal to the government of the United States, or who use their official influence in any manner to hinder, delay, prevent, or obstruct the due and proper administration of this act and the acts to which it is supplementary.

SEC. 5. *And be it further enacted*, That the boards of registration provided for in the act . . . [of March 23, 1867] . . . , shall have power, and it shall be their duty before allowing the registration of any person, to ascertain, upon such facts or information as they can obtain, whether such person is entitled to be registered under said act, and the oath required by said act shall not be conclusive on such question, and no person shall be registered unless such board shall decide that he is entitled thereto; and such board shall also have power to examine, under oath, . . . any one touching the qualification of any person claiming registration; but in every case of refusal by the board to register an applicant, and in every case of striking his name from the list as hereinafter provided, the board shall make a note or memorandum, which shall be returned with the registration list to the commanding general of the district, setting forth the grounds of such refusal or such striking from the list: *Provided*, That no person shall be disqualified as member of any board of registration by reason of race or color.

SEC. 6. *And be it further enacted*, That the true intent and meaning of the oath prescribed in said supplementary act is, (among other things,) that no person who has been a member of the legislature of any State, or who has held any executive or judicial office in any State, whether he has taken an oath to support the Constitution of the United States or not, and whether

he was holding such office at the commencement of the rebellion, or had held it before, and who has afterwards engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof, is entitled to be registered or to vote; and the words "executive or judicial office in any State" in said oath mentioned shall be construed to include all civil offices created by law for the administration of any general law of a State, or for the administration of justice.

SEC. 7. *And be it further enacted*, That the time for completing the original registration provided for in said act may, in the discretion of the commander of any district, be extended to . . . [October 1, 1867] . . . ; and the boards of registration shall have power, and it shall be their duty, commencing fourteen days prior to any election under said act, and upon reasonable public notice of the time and place thereof, to revise, for a period of five days, the registration lists, and upon being satisfied that any person not entitled thereto has been registered, to strike the name of such person from the list, and such person shall not be allowed to vote. And such board shall also, during the same period, add to such registry the names of all persons who at that time possess the qualifications required by said act who have not been already registered; and no person shall, at any time, be entitled to be registered or to vote by reason of any executive pardon or amnesty for any act or thing which, without such pardon or amnesty, would disqualify him from registration or voting.

SEC. 8. *And be it further enacted*, That section four of said last-named act shall be construed to authorize the commanding general named therein, whenever he shall deem it needful, to remove any member of a board of registration and to appoint another in his stead, and to fill any vacancy in such board.

SEC. 9. *And be it further enacted*, That all members of said boards of registration and all persons hereafter elected or appointed to office in said military districts, under any so-called State or municipal authority, or by detail or appointment of the district commanders, shall be required to take and to subscribe the oath of office prescribed by law for officers of the United States.

SEC. 10. *And be it further enacted*, That no district commander or member of the board of registration, or any of the officers or appointees acting under them, shall be bound

in his action by any opinion of any civil officer of the United States.

Sec. 11. *And be it further enacted*, That all provisions of this act and of the acts to which this is supplementary shall be construed liberally, to the end that all the intents thereof may be fully and perfectly carried out.

No. 155. Articles of Impeachment

March 2–3, 1868

December 17, 1866, James M. Ashley of Ohio moved in the House to suspend the rules for the purpose of reporting from the Committee on Territories a resolution for the appointment of a select committee "to inquire whether any acts have been done by any officer of the Government of the United States which, in contemplation of the Constitution, are high crimes or misdemeanors, and whether said acts were designed or calculated to overthrow, subvert, or corrupt the Government of the United States, or any department thereof." The vote was 90 to 49, but two-thirds being necessary, the motion was lost. January 7, 1867, resolutions for the impeachment of President Johnson were offered by Benjamin F. Loan and John R. Kelso of Missouri, and referred, respectively, to the Committee on Reconstruction and the Committee on the Judiciary. On the same day Ashley, as a question of privilege, impeached Johnson of high crimes and misdemeanors, charging him "with a usurpation of power and violation of law" in having corruptly used the powers of appointment, pardon, and veto, "corruptly disposed of public property of the United States," and "corruptly interfered in elections, and committed acts which, in contemplation of the Constitution, are high crimes and misdemeanors." By a vote of 108 to 39 the charges were referred to the Committee on the Judiciary for investigation. February 28 the committee reported that, from lack of time, it had reached no conclusion. March 7 a resolution submitted by Ashley directed the continuance of the investigation, and on the 29th, on motion of Sidney Clarke of Kansas, the committee was requested to report at the first meeting of the House after the recess. November 25 George S. Boutwell of Massachusetts submitted the majority report of the committee. The report closed with a resolution that the President "be impeached for high crimes and misdemeanors." December 7, by a vote of 57 to 108, the resolution was disagreed to. The evidence taken by the Committee on the Judiciary, together with the correspondence between Johnson and Grant, was referred to the Committee on Reconstruction. February 21, 1868, Stanton communicated to the House Johnson's order removing him from the office of Secretary of War; this, with a resolution for the impeachment of the President, was also referred to the Committee on Reconstruction. On the 22d the committee reported a resolution recom

mending impeachment, which was agreed to on the 24th by a vote of 128 to 47. Committees were appointed to prepare the articles of impeachment and to notify the Senate. The action of the House was communicated to the Senate on the 25th. Nine articles of impeachment were agreed to by the House March 2, two additional articles being approved the following day. On the 4th the articles were read to the Senate, and on the 6th an order was entered directing the issuance of a summons to the President to file an answer to the charges, the order being made returnable March 13. A request for more time in which to prepare an answer secured an extension to the 23d. On that date the answer of the President was read. A request for thirty days in which to complete preparations for the trial was denied, the vote being 12 to 41. The trial began March 30, Chief Justice Chase presiding, and continued until May 12. May 16 a vote was taken on Article XI. of the charges. The vote was 35 "guilty," 19 "not guilty." Votes on Articles II. and III., May 26, showed the same result, whereupon the court, by a vote of 34 to 16, adjourned *sine die*. Judgment of acquittal was entered on the three articles on which a vote was taken.

For convenience, the votes on the adoption of the several articles are given in brackets after each article in the text following.

REFERENCES. — *Text* in *House Journal*, 40th Cong., 2d Sess., 440–465. For the proceedings prior to the trial see the *House and Senate Journals* and the *Cong. Globe;* for the trial see the *Senate Journal*, Appendix, and the *Cong. Globe*, Supplement. The report of November 25, 1867, is *House Report* 7, 40th Cong., 1st Sess. On the Stanton-Grant episode see *House Exec. Docs.* 57, 149, 168 and 183, 40th Cong., 2d Sess. Extracts from Johnson's interviews and speeches are given in McPherson, *Reconstruction*, 44–63, 127–143. The early impeachment testimony is in *House Report* 7, 40th Cong., 1st Sess.; for the articles and fuller testimony see *House Misc. Doc.* 91, 40th Cong., 2d Sess. On the conduct of the impeachment see *House Reports* 74 and 75, *Senate Report* 59, and *Senate Misc. Doc.* 43, 40th Cong., 2d Sess. See also De Witt, *Impeachment and Trial of Andrew Johnson;* Foster, *Commentaries on the Constitution*, I., 546–564.

ARTICLE I. That said Andrew Johnson, President of the United States, on . . . [February 21, 1868] . . . , at Washington, in the District of Columbia, unmindful of the high duties of his office, of his oath of office, and of the requirement of the Constitution that he should take care that the laws be faithfully executed, did unlawfully, and in violation of the Constitution and laws of the United States, issue an order in writing for the removal of Edwin M. Stanton from the office of Secretary for the Department of War, said Edwin M. Stanton having been theretofore duly appointed and commissioned, by and with the advice and consent of the Senate of the United States, as such Secretary, and said Andrew Johnson, President of the United States, on . . . [August

12, 1867] . . . , and during the recess of said Senate, having suspended by his order Edwin M. Stanton from said office, and within twenty days after the first day of the next meeting of said Senate, that is to say, on the twelfth day of December in the year last aforesaid, having reported to said Senate such suspension with the evidence and reasons for his action in the case and the name of the person designated to perform the duties of such office temporarily until the next meeting of the Senate, and said Senate thereafterwards on . . . [January 13, 1868] . . . , having duly considered the evidence and reasons reported by said Andrew Johnson for said suspension, and having refused to concur in said suspension, whereby and by force of the provisions of . . . [the Tenure of Office Act] . . . , said Edwin M. Stanton did forthwith resume the functions of his office, whereof the said Andrew Johnson had then and there due notice, and said Edwin M. Stanton, by reason of the premises, on said twenty-first day of February, being lawfully entitled to hold said office of Secretary for the Department of War, which said order for the removal of said Edwin M. Stanton is in substance as follows, that is to say:

EXECUTIVE MANSION,
Washington, D.C., February 21, 1868.

SIR: By virtue of the power and authority vested in me as President by the Constitution and laws of the United States, you are hereby removed from office as Secretary for the Department of War, and your functions as such will terminate upon receipt of this communication.

You will transfer to Brevet Major General Lorenzo Thomas, Adjutant General of the army, who has this day been authorized and empowered to act as Secretary of War *ad interim*, all records, books, papers, and other public property now in your custody and charge.

Respectfully, yours, ANDREW JOHNSON.

To the Hon. EDWIN M. STANTON, *Washington, D.C.*

Which order was unlawfully issued with intent then and there to violate . . . [the Tenure of Office Act] . . . , and with the further intent, contrary to the provisions of said act, in violation thereof, and contrary to the provisions of the Constitution of the United States, and without the advice and consent of the Senate of the United States, the said Senate then and there being in session, to remove said Edwin M. Stanton from the office of Secretary

for the Department of War, the said Edwin M. Stanton being then and there Secretary for the Department of War, and being then and there in the due and lawful execution and discharge of the duties of said office, whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

[Agreed to, 127 to 42, 20 not voting.]

ARTICLE II. That on said twenty-first day of February . . . [1868] . . . , at Washington, . . . said Andrew Johnson . . . , unmindful of the high duties of his office, of his oath of office, and in violation of the Constitution of the United States, and contrary to the provisions of . . . [the Tenure of Office Act] . . . , without the advice and consent of the Senate of the United States, said Senate then and there being in session, and without authority of law, did, with intent to violate the Constitution of the United States, and the act aforesaid issue and deliver to one Lorenzo Thomas a letter of authority in substance as follows, that is to say:

EXECUTIVE MANSION,
Washington, D.C., February 21, 1868.

SIR: The Hon. Edwin M. Stanton having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War *ad interim*, and will immediately enter upon the discharge of the duties pertaining to that office.

Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

Respectfully, yours, ANDREW JOHNSON.

To Brevet Major General LORENZO THOMAS,
Adjutant General U.S. Army, Washington, D.C.

Then and there being no vacancy in said office of Secretary for the Department of War, whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

[Agreed to, 124 to 41, 24 not voting.]

ARTICLE III. That said Andrew Johnson, . . . [on February 21, 1868] . . . , at Washington, . . . did commit and was guilty of a high misdemeanor in office in this, that, without authority of law, while the Senate of the United States was then and there

in session, he did appoint one Lorenzo Thomas to be Secretary for the Department of War *ad interim*, without the advice and consent of the Senate, and with intent to violate the Constitution of the United States, no vacancy having happened in said office of Secretary for the Department of War during the recess of the Senate, and no vacancy existing in said office at the time. . . .

[Agreed to, 124 to 40, 25 not voting.]

ARTICLE IV. That said Andrew Johnson, . . . [on February 21, 1868] . . . , at Washington, . . . did unlawfully conspire with one Lorenzo Thomas, and with other persons to the House of Representatives unknown, with intent, by intimidation and threats, unlawfully to hinder and prevent Edwin M. Stanton, then and there the Secretary for the Department of War, duly appointed under the laws of the United States, from holding said office of Secretary for the Department of War, contrary to and in violation of the Constitution of the United States, and of the provisions of . . . [the Conspiracy Act of July 31, 1861].

[Agreed to, 127 to 42, 20 not voting.]

ARTICLE V. That said Andrew Johnson, . . . [on February 21, 1868] . . . , and on divers other days and times in said year . . . [before March 2, 1868] . . . , at Washington, . . . did unlawfully conspire with one Lorenzo Thomas, and with other persons to the House of Representatives unknown, to prevent and hinder the execution of . . . [the Tenure of Office Act] . . . , and in pursuance of said conspiracy did unlawfully attempt to prevent Edwin M. Stanton, then and there being Secretary for the Department of War, duly appointed and commissioned under the laws of the United States, from holding said office . . .

[Agreed to, 127 to 42, 20 not voting.]

ARTICLE VI. That said Andrew Johnson, . . . [on February 21, 1868] . . . , at Washington, . . . did unlawfully conspire with one Lorenzo Thomas, by force to seize, take, and possess the property of the United States in the Department of War, and then and there in the custody and charge of Edwin M. Stanton, Secretary for said department, contrary to the provisions of . . . [the act of July 31, 1861] . . . , and with intent to violate and disregard . . . [the Tenure of Office Act] . . .

[Agreed to, 127 to 42, 20 not voting.]

ARTICLE VII. That said Andrew Johnson, . . . [on February

21, 1868] . . . , at Washington, . . . did unlawfully conspire with one Lorenzo Thomas with intent unlawfully to seize, take, and possess the property of the United States in the Department of War, in the custody and charge of Edwin M. Stanton, Secretary for said department, with intent to violate and disregard . . . [the Tenure of Office Act] . . .

[Agreed to, 127 to 42, 20 not voting.]

ARTICLE VIII. That said Andrew Johnson, . . . with intent unlawfully to control the disbursements of the moneys appropriated for the military service and for the Department of War, . . . [on February 21, 1868] . . . , at Washington, . . . did unlawfully and contrary to the provisions of . . . [the Tenure of Office Act] . . . , and in violation of the Constitution of the United States, and without the advice and consent of the Senate of the United States, and while the Senate was then and there in session, there being no vacancy in the office of Secretary for the Department of War, and with intent to violate and disregard the act aforesaid, then and there issue and deliver to one Lorenzo Thomas a letter of authority in writing, in substance as follows, that is to say:

[Here follows the letter of appointment as in Article II.]

[Agreed to, 127 to 42, 20 not voting.]

ARTICLE IX. That said Andrew Johnson, . . . [on February 22, 1868] . . . , at Washington, . . . in disregard of the Constitution and the laws of the United States duly enacted, as commander-in-chief of the army of the United States, did bring before himself then and there William H. Emory, a major general by brevet in the army of the United States, actually in command of the department of Washington and the military forces thereof, and did then and there, as such commander-in-chief, declare to and instruct said Emory that part of . . . [the Army Appropriation Act of March 2, 1867] . . . , especially the second section thereof, . . . was unconstitutional, and in contravention of the commission of said Emory, and which said provision of law had been theretofore duly and legally promulgated by General Order for the government and direction of the army of the United States, as the said Andrew Johnson then and there well knew, with intent thereby to induce said Emory in his official capacity as commander of the department of Washington to violate the provisions of said

act, and to take and receive, act upon, and obey such orders as he, the said Andrew Johnson, might make and give, and which should not be issued through the General of the army of the United States, according to the provisions of said act, and with the further intent thereby to enable him, the said Andrew Johnson, to prevent the execution of . . . [the Tenure of Office Act] . . . , and to unlawfully prevent Edwin M. Stanton, then being Secretary for the Department of War, from holding said office and discharging the duties thereof . . .

[Agreed to, 108 to 41. 40 not voting.]

Article X. That said Andrew Johnson, . . . unmindful of the high duties of his office and the dignity and proprieties thereof, and of the harmony and courtesies which ought to exist and be maintained between the executive and legislative branches of the government of the United States, designing and intending to set aside the rightful authority and powers of Congress, did attempt to bring into disgrace, ridicule, hatred, contempt, and reproach the Congress of the United States, and the several branches thereof, to impair and destroy the regard and respect of all the good people of the United States for the Congress and legislative power thereof, (which all officers of the government ought inviolably to preserve and maintain,) and to excite the odium and resentment of all the good people of the United States against Congress and the laws by it duly and constitutionally enacted; and in pursuance of his said design and intent openly and publicly, and before divers assemblages of the citizens of the United States convened in divers parts thereof to meet and receive said Andrew Johnson as the Chief Magistrate of the United States, did, . . . [on August 18, 1866] . . . , and on divers other days and times, as well before as afterward, make and deliver with a loud voice certain intemperate, inflammatory and scandalous harangues, and did therein utter loud threats and bitter menaces as well against Congress as the laws of the United States duly enacted thereby, amid the cries, jeers, and laughter of the multitudes then assembled and in hearing, which are set forth in the several specifications hereinafter written, in substance and effect, that is to say:

Specification First. In this, that at Washington, . . . in the Executive Mansion, to a committee of citizens who called

upon the President of the United States, speaking of and concerning the Congress of the United States, said Andrew Johnson, . . . [on August 18, 1866] . . . , did, in a loud voice, declare in substance and effect, among other things, that is to say:

* * * * * * * *

"We have witnessed in one department of the government every endeavor to prevent the restoration of peace, harmony, and union. We have seen hanging upon the verge of the government, as it were, a body called, or which assumes to be, the Congress of the United States, while in fact it is a Congress of only a part of the States. We have seen this Congress pretend to be for the Union, when its every step and act tended to perpetuate disunion and make a disruption of the States inevitable. * * * We have seen Congress gradually encroach, step by step, upon constitutional rights, and violate, day after day and month after month, fundamental principles of the government. We have seen a Congress that seemed to forget that there was a limit to the sphere and scope of legislation. We have seen a Congress in a minority assume to exercise power which, allowed to be consummated, would result in despotism or monarchy itself."

Specification Second. In this, that at Cleveland, . . . [on September 3, 1866] . . . , before a public assemblage of citizens and others, said Andrew Johnson, . . . speaking of and concerning the Congress of the United States, did, in a loud voice, declare in substance and effect, among other things, that is to say:

"I will tell you what I did do. I called upon your Congress that is trying to break up the government."

* * * * * * * *

"In conclusion, beside that, Congress had taken much pains to poison their constituents against him. But what had Congress done? Have they done anything to restore the union of these States? No; on the contrary, they had done everything to prevent it; and because he stood now where he did when the rebellion commenced, he had been denounced as a traitor. Who had run greater risks or made greater sacrifices than himself? But Congress, factious and domineering, had undertaken to poison the minds of the American people."

Specification Third. In this, that at St. Louis, . . . [on September 8, 1866] . . . , before a public assemblage of citizens and others, said Andrew Johnson, . . . speaking of and concerning the Congress of the United States, did, in a loud voice, declare, in substance and effect, among other things, that is to say:

"Go on. Perhaps if you had a word or two on the subject of New Orleans you might understand more about it than you do. And if you will go back — if you will go back and ascertain the cause of the riot at New Orleans perhaps you will not be so prompt in calling out 'New Orleans.' If you will take up the riot at New Orleans and trace it back to its source or its immediate cause, you will find out who was responsible for the blood that was shed there. If you will take up the riot at New Orleans and trace it back to the radical Congress, you will find that the riot at New Orleans was substantially planned. If you will take up the proceedings in their caucuses you will understand that they there knew that a convention was to be called which was extinct by its power having expired; that it was said that the intention was that a new government was to be organized, and on the organization of that government the intention was to enfranchise one portion of the population, called the colored population, who had just been emancipated, and at the same time disfranchise white men. When you design to talk about New Orleans you ought to understand what you are talking about. When you read the speeches that were made, and take up the facts on the Friday and Saturday before that convention sat, you will there find that speeches were made incendiary in their character, exciting that portion of the population, the black population, to arm themselves and prepare for the shedding of blood. You will also find that that convention did assemble in violation of law, and the intention of that convention was to supersede the reorganized authorities in the State government of Louisiana, which had been recognized by the government of the United States; and every man engaged in that rebellion in that convention, with the intention of superseding and upturning the civil government which had been recognized by the government of the United States, I say that he was a traitor to the Constitution of the United States, and hence you

find that another rebellion was commenced, *having its origin in the radical Congress.*

* * * * * * * *

"So much for the New Orleans riot. And there was the cause and the origin of the blood that was shed; and every drop of blood that was shed is upon their skirts and they are responsible for it. I could test this thing a little closer, but will not do it here to-night. But when you talk about the causes and consequences that resulted from proceedings of that kind, perhaps, as I have been introduced here, and you have provoked questions of this kind, though it does not provoke me, I will tell you a few wholesome things that have been done by this radical Congress in connection with New Orleans and the extension of the elective franchise.

"I know that I have been traduced and abused. I know it has come in advance of me here as elsewhere — that I have attempted to exercise an arbitrary power in resisting laws that were intended to be forced upon the government; that I had exercised that power; that I had abandoned the party that elected me, and that I was a traitor, because I exercised the veto power in attempting and did arrest for a time a bill that was called a 'Freedman's Bureau' bill; yes, that I was a traitor. And I have been traduced, I have been slandered, I have been maligned, I have been called Judas Iscariot, and all that. Now, my countrymen here to-night, it is very easy to indulge in epithets; it is easy to call a man Judas, and cry out traitor; but when he is called upon to give arguments and facts he is very often found wanting. Judas Iscariot — Judas. There was a Judas, and he was one of the twelve apostles. Oh yes, the twelve apostles had a Christ. The twelve apostles had a Christ, and he never could have had a Judas unless he had had twelve apostles. If I have played the Judas, who has been my Christ that I have played the Judas with? Was it Thad. Stevens? Was it Wendell Phillips? Was it Charles Sumner? These are the men that stop and compare themselves with the Saviour; and everybody that differs with them in opinion, and to try to stay and arrest their diabolical and nefarious policy, is to be denounced as a Judas."

* * * * * * * *

"Well, let me say to you, if you will stand by me in this action, if you will stand by me in trying to give the people a fair chance — soldiers and citizens — to participate in these offices, God being willing, I will kick them out. I will kick them out just as fast as I can.

"Let me say to you, in concluding, that what I have said I intended to say. I was not provoked into this, and I care not for their menaces, the taunts, and the jeers. I care not for threats. I do not intend to be bullied by my enemies nor overawed by my friends. But God willing, with your help, I will veto their measures whenever any of them come to me."

Which said utterances, declarations, threats, and harangues, highly censurable in any, are peculiarly indecent and unbecoming in the Chief Magistrate of the United States, by means whereof said Andrew Johnson has brought the high office of the President of the United States into contempt, ridicule, and disgrace, to the great scandal of all good citizens . . .

[Agreed to, 88 to 44, 57 not voting.]

Article XI. That said Andrew Johnson, . . . unmindful of the high duties of his office and of his oath of office, and in disregard of the Constitution and laws of the United States, did . . . on the 18th day of August, 1866, at the city of Washington, . . . by public speech, declare and affirm, in substance, that the thirty-ninth Congress of the United States was not a Congress of the United States authorized by the Constitution to exercise legislative power under the same; but, on the contrary, was a Congress of only part of the States, thereby denying and intending to deny that the legislation of said Congress was valid or obligatory upon him, the said Andrew Johnson, except in so far as he saw fit to approve the same, and also thereby denying and intending to deny the power of the said thirty-ninth Congress to propose amendments to the Constitution of the United States; and in pursuance of said declaration, the said Andrew Johnson, . . . afterward, to wit, on the 21st day of February, 1868, at the city of Washington, . . . did unlawfully and in disregard of the requirements of the Constitution, that he should take care that the laws be faithfully executed, attempt to prevent the execution of . . . [the Tenure of Office Act] . . . , by unlawfully devising and contriving, and attempting to devise and contrive, means by which he should

prevent Edwin M. Stanton from forthwith resuming the functions of the office of Secretary for the Department of War, notwithstanding the refusal of the Senate to concur in the suspension theretofore made by said Andrew Johnson of said Edwin M. Stanton from said office of Secretary for the Department of War, and also by further unlawfully devising and contriving and attempting to devise and contrive means then and there to prevent the execution of . . . [the Army Appropriation Act of March 2, 1867] . . . , and also to prevent the execution of . . . [the Reconstruction Act of March 2, 1867] . . .

[Agreed to, 109 to 32, 48 not voting.]

No. 156. Fourth Reconstruction Act

March 11, 1868

A BILL "to facilitate the restoration of the late rebel States" was introduced in the House December 5, 1867, by Ashley of Ohio, and referred to the Committee on the Judiciary. On the 18th the bill was withdrawn in favor of a bill of similar purport, substantially identical with the act as passed, brought forward by Thaddeus Stevens. The latter bill passed the House the same day by a vote of 104 to 37, 47 not voting. The bill was not at once considered in the Senate. The rejection, February 4, 1868, of the proposed constitution of Alabama, however, when "the registered voters refrained from voting upon the question of ratification in sufficient numbers to reduce the vote to several thousand less than half the registration," hastened action. A substitute for the House bill was reported February 17, and on the 26th was agreed to, the vote being 28 to 6. The House, by a vote of 96 to 32, 61 not voting, concurred. March 11 the bill became law by the ten days rule.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XV., 41. For the proceedings see the *House and Senate Journals*, 40th Cong., 2d Sess., and the *Cong. Globe*. The text of Ashley's bill is in the *Globe*, December 18, House proceedings. On elections in the Southern States see *House Exec. Doc.* 291, 40th Cong., 1st Sess.; annual report of the Secretary of War, 1868.

An Act to amend the Act . . . [of March 23, 1867] . . .

Be it enacted . . . , That hereafter any election authorized by the act [of March 23, 1867] . . . , shall be decided by a majority of the votes actually cast; and at the election in which the question

of the adoption or rejection of any constitution is submitted, any person duly registered in the State may vote in the election district where he offers to vote when he has resided therein for ten days next preceding such election, upon presentation of his certificate of registration, his affidavit, or other satisfactory evidence, under such regulations as the district commanders may prescribe.

SEC. 2. *And be it further enacted*, That the constitutional convention of any of the States mentioned in the acts to which this is amendatory may provide that at the time of voting upon the ratification of the constitution the registered voters may vote also for members of the House of Representatives of the United States, and for all elective officers provided for by the said constitution; and the same election officers who shall make the return of the votes cast on the ratification or rejection of the constitution, shall enumerate and certify the votes cast for members of Congress.

No. 157. Act admitting Arkansas to Representation in Congress

June 22, 1868

UNDER Lincoln's proclamation of December 8, 1863 [No. 137], Arkansas formed a State government, but its representatives were refused admittance by Congress, and the joint resolution of February 8, 1865 [No. 140], included the State in the list of those whose electoral votes should not be counted. The reconstruction government was, however, recognized by President Johnson, and the State was counted in the list of those whose legislatures had ratified the Thirteenth Amendment. The first reconstruction act of March 2, 1867 [No. 149], placed Arkansas in the fourth military division, and the rehabilitation of the State proceeded under the military government. The narrow majority in favor of the ratification of the State constitution, March 13, 1868, led to the introduction of a bill to admit Arkansas to representation in Congress. The bill was reported in the House May 7, by Thaddeus Stevens from the Joint Committee on Reconstruction, and passed the next day by a vote of 110 to 32, 48 not voting. In the Senate an amendment prohibiting the abridgment of the elective franchise, etc., on account of race or color was agreed to, June 1, by a vote of 26 to 14, and the bill passed, the final vote being 34 to 8. The House refused to concur, and the bill received its final form from a conference committee. The report of the committee was agreed to by

the Senate June 6, and by the House June 8. On the 20th the bill was vetoed by President Johnson, but was passed over the veto, in the House the same day by a vote of 111 to 31, 48 not voting, and in the Senate June 22, by a vote of 30 to 7. Senators from the State qualified June 23, and Representatives June 24.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XV., 72. For the proceedings see the *House and Senate Journals*, 40th Cong., 2d Sess., and the *Cong. Globe*. On the election in Arkansas see *House Exec. Doc.* 278; on the ratification of the Fourteenth Amendment, *House Misc. Doc.* 118, *ibid.*

AN ACT to admit the State of Arkansas to representation in Congress.

WHEREAS the people of Arkansas, in pursuance of the provisions of an act entitled "An act for the more efficient government of the rebel States," passed March second, eighteen hundred and sixty-seven, and the acts supplementary thereto, have framed and adopted a constitution of State government, which is republican, and the legislature of said State has duly ratified the amendment to the Constitution of the United States proposed by the thirty-ninth Congress, and known as article fourteen: Therefore,

Be it enacted . . . , That the State of Arkansas is entitled and admitted to representation in Congress as one of the States of the Union upon the following fundamental condition: That the constitution of Arkansas shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote who are entitled to vote by the constitution herein recognized, except as a punishment for such crimes as are now felonies at common law, whereof they shall have been duly convicted, under laws equally applicable to all the inhabitants of said State: *Provided*, That any alteration of said constitution prospective in its effect may be made in regard to the time and place of residence of voters.

No. 158. Act admitting North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida to Representation in Congress

June 25, 1868

As a result of the vote on the ratification of the State constitution of Alabama, a bill to restore Alabama to the Union was introduced in the House March 10, 1868, by Thaddeus Stevens. A substitute for this bill passed the House, but was indefinitely postponed by the Senate. May 11 a bill to admit North Carolina, South Carolina, Louisiana, Georgia, and Alabama to representation in Congress was reported by Stevens from the Joint Committee on Reconstruction. An amendment striking out Alabama from the list of States was rejected by a vote of 60 to 74, 55 not voting. On the 14th the amended bill passed the House, the vote being 110 to 35, 44 not voting. June 10 the Senate, by a vote of 22 to 21, included Florida, and the bill with further amendments passed, the vote being 31 to 5. The House concurred in the Senate amendments by a vote of 111 to 28, 50 not voting, an amendment striking out Florida being rejected by a vote of 45 to 99, 45 not voting. The bill was vetoed by President Johnson June 25, and passed over the veto the same day, in the House by a vote of 108 to 32, 54 not voting, and in the Senate by a vote of 35 to 8.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XV., 73, 74. For the proceedings see the *House and Senate Journals*, 40th Cong., 2d Sess., and the *Cong. Globe*. On Alabama see *House Exec. Docs.* 302 *and* 303, and *House Report* 21, 40th Cong., 2d Sess.; on North Carolina, South Carolina, Georgia, and Louisiana, *House Exec. Docs.* 281, 300, *and* 301, 40th Cong., 2d Sess., and *Senate Exec. Doc.* 15, 40th Cong., 3d Sess.; on Florida, *House Misc. Docs.* 109 *and* 114, 40th Cong., 2d Sess.

An Act to admit the States of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida, to Representation in Congress.

WHEREAS the people of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida have, in pursuance of the provisions of . . . [the Reconstruction Act of March 2, 1867] . . . , and the acts supplementary thereto, framed constitutions of State government which are republican and have adopted said constitutions by large majorities of the votes cast at the elections held for the ratification or rejection of the same: Therefore,

Be it enacted . . . , That each of the States of North Caro-

lina, South Carolina, Louisiana, Georgia, Alabama, and Florida, shall be entitled and admitted to representation in Congress as a State of the Union when the legislature of such State shall have duly ratified the amendment to the Constitution of the United States proposed by the Thirty-ninth Congress, and known as article fourteen, upon the following fundamental conditions: That the constitutions of neither of said States shall ever be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote in said State, who are entitled to vote by the constitution thereof herein recognized, except as a punishment for such crimes as are now felonies at common law, whereof they shall have been duly convicted under laws equally applicable to all the inhabitants of said State: *Provided*, That any alteration of said constitution may be made with regard to the time and place of residence of voters; and the State of Georgia shall only be entitled and admitted to representation upon this further fundamental condition: that the first and third subdivisions of section seventeen of the fifth article of the constitution of said State, except the proviso to the first subdivision, shall be null and void, and that the general assembly of said State by solemn public act shall declare the assent of the State to the foregoing fundamental condition.

* * * * * * * *

SEC. 3. *And be it further enacted*, That the first section of this act shall take effect as to each State, except Georgia, when such State shall, by its legislature, duly ratify article fourteen of the amendments to the Constitution of the United States, proposed by the Thirty-ninth Congress, and as to the State of Georgia when it shall in addition give the assent of said State to the fundamental condition hereinbefore imposed upon the same; and thereupon the officers of each State duly elected and qualified under the constitution thereof shall be inaugurated without delay; but no person prohibited from holding office under the United States, or under any State, by section three of the proposed amendment to the Constitution of the United States, known as article fourteen, shall be deemed eligible to any office in either of said States, unless relieved from disability as provided in said amendment; and it is hereby made the duty of the President within ten days after receiving official information of the ratification of said

amendment by the legislature of either of said States to issue a proclamation announcing that fact.

No. 159. Oath of Office

July 11, 1868

MARCH 5, 1868, the House having under consideration a resolution for the removal of the political disabilities of R. R. Butler, a representative-elect from Tennessee, the resolution, on motion of Dawes of Massachusetts, was recommitted to the Committee on Elections with instructions to report a general bill for the removal of such disabilities. The bill was reported the same day, and on the 6th passed. Subsequent amendments in the Senate and House were unimportant, and the yeas and nays were not called for. An act of February 15, 1871, allowed those who could not take the oath prescribed by the act of July 2, 1862, and who were not rendered ineligible to office by the Fourteenth Amendment, to take the oath prescribed by this act.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XV., 85. For the proceedings see the *House and Senate Journals*, 40th Cong., 2d Sess.

An Act prescribing an Oath of Office to be taken by Persons from whom legal Disabilities shall have been removed.

Be it enacted . . . . , That whenever any person who has participated in the late rebellion, and from whom all legal disabilities arising therefrom have been removed by act of Congress by a vote of two thirds of each house, has been or shall be elected or appointed to any office or place of trust in or under the government of the United States, he shall, before entering upon the duties thereof, instead of the oath prescribed by the act of . . . [July 2, 1862] . . . , take and subscribe the following oath or affirmation: I, A. B., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

No. 160. Joint Resolution excluding Electoral Votes of the Late Rebellious States

July 20, 1868

A JOINT resolution "excluding from the electoral college votes of States lately in rebellion which shall not have been reorganized" was introduced in the Senate June 2, 1868, by George F. Edmunds of Vermont, and referred to the Committee on the Judiciary. The resolution was reported on the 29th with an amendment inserting the clause beginning "nor unless such election of electors." The phraseology of the bill rather than its substance was the chief occasion of debate. The resolution passed the Senate July 10, by a vote of 29 to 5, 23 not voting. The House added the proviso as an amendment, and passed the bill on the 11th by a vote of 112 to 21, 65 not voting. The Senate, by a vote of 19 to 15, concurred. The resolution was vetoed by President Johnson July 20, and passed over the veto the same day, in the House by a vote of 134 to 36, 40 not voting, in the Senate by a vote of 45 to 8.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XV., 257. For the proceedings see the *House and Senate Journals*, 40th Cong., 2d Sess., and the *Cong. Globe*.

A Resolution excluding from the Electoral College Votes of States lately in Rebellion, which shall not have been reorganized.

Resolved . . . , That none of the States whose inhabitants were lately in rebellion shall be entitled to representation in the electoral college for the choice of President or Vice-President of the United States, nor shall any electoral votes be received or counted from any of such States, unless at the time prescribed by law for the choice of electors the people of such States, pursuant to the acts of Congress in that behalf, shall have, since . . . [March 4, 1867] . . . , adopted a constitution of State government under which a State government shall have been organized and shall be in operation, nor unless such election of electors shall have been held under the authority of such constitution and government, and such State shall have also become entitled to representation in Congress, pursuant to the acts of Congress in that behalf: *Provided*, That nothing herein contained shall be construed to apply to any State which was represented in Congress on . . . [March 4, 1867] . . .

No. 161. Fourteenth Amendment to the Constitution

July 28, 1868

Various propositions to amend the Constitution were submitted in both House and Senate during the first session of the thirty-ninth Congress. A joint resolution embodying the substance of the provisions of the Fourteenth Amendment was reported in the House April 30, 1866, by Thaddeus Stevens, from the Committee on Reconstruction, together with a bill for admission to representation of certain States ratifying the same. May 10 the resolution passed the House, the vote being 128 to 37, 18 not voting. The third section of the House resolution provided that until July 4, 1870, all persons who had voluntarily aided the rebellion should be denied the privilege of voting for Representatives in Congress or presidential electors. The Senate, by a vote of 43 to 0, struck out this section, and recast the amendment in the form in which it was later submitted. The resolution passed the Senate June 8, by a vote of 33 to 11. On the 13th the House, by a vote of 138 to 36, 10 not voting, concurred. The amendment was rejected by Delaware, Maryland, and Kentucky, and was not acted on by California. It was also at first rejected by Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas, with the result that the ratification of the amendment was, by the Reconstruction Act of March 2, 1867, made a condition of the restoration of those States. The ratifications of New Jersey and Ohio were rescinded by the legislatures of those States. July 20, 1868, a proclamation by Seward announced that the amendment had been ratified by the legislatures of twenty-three States, and "by newly constituted and newly established bodies avowing themselves to be and acting as the legislatures of" North Carolina, South Carolina, Florida, Alabama, Louisiana, and Arkansas; and that if the ratifications of New Jersey and Ohio "be deemed as remaining of full force and effect," the amendment was in force. Thereupon Congress, by resolution of July 21, declared the amendment in force and directed its promulgation as such. The final proclamation was issued July 28.

References. — *Text* in *Revised Statutes* (ed. 1878), 31. For the proceedings of Congress see the *House and Senate Journals*, 39th Cong., and 40th Cong., 1st and 2d Sess., and the *Cong. Globe*. The various proclamations are in *U.S. Statutes at Large*, XV. For some early proposals see McPherson, *Reconstruction*, 103. See also Guthrie, *Fourteenth Amendment; Slaughter House Cases*, 16 *Wallace*, 36; Johnson's message of June 22, 1866. Many disabilities under the amendment were removed by special acts; for the general act of May 22, 1872, see No. 173, *post*.

Article XIV.

Sec. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Sec. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Sec. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States

nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Sec. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

No. 162. Provisional Governments of Virginia, Texas, and Mississippi

February 18, 1869

A joint resolution for the removal of certain civil officers in Virginia and Texas was introduced in the Senate July 24, 1868, and passed the same day. The bill was not taken up in the House until December 10; it was then referred to the Committee on Reconstruction, which reported it January 18, 1869, with an amendment, the amendment being the first two provisos of the act. The same day the bill passed the House. The Senate added the proviso including Mississippi, in which the House concurred. The resolution became law under the ten days rule.

References. — *Text* in *U.S. Statutes at Large*, XV., 344. For the proceedings see the *House and Senate Journals*, 40th Cong., 2d and 3d Sess., and the *Cong. Globe*. The debate was unimportant.

A Resolution respecting the provisional Governments of Virginia and Texas.

Resolved . . . , That the persons now holding civil offices in the provisional governments of Virginia and Texas, who cannot take and subscribe the oath prescribed by the act . . . [of July 2, 1862] . . . , shall, on the passage of this resolution, be removed therefrom; and it shall be the duty of the district commanders to fill the vacancies so created by the appointment of persons who can take said oath: *Provided*, That the provisions of this resolution shall not apply to persons who by reason of the removal of their disabilities as provided in the fourteenth amendment to the Constitution shall have qualified for any office in pursuance of the act . . . [of July 11, 1868] . . . : *And provided further*, That this resolution shall not take effect until thirty days

from and after its passage: *And it is further provided*, That this resolution shall be, and is hereby extended to, and made applicable to the State of Mississippi.

No. 163. Act to strengthen the Public Credit

March 18, 1869

A BILL "to strengthen the public credit, and relating to contracts for the payment of coin," was introduced in the House January 20, 1869, by Schenck of Ohio, and referred to the Committee of Ways and Means. The bill was taken up February 24, and passed the same day by a vote of 121 to 60, 41 not voting. On the 27th the bill passed the Senate, but was disposed of by a "pocket" veto. The second section of the bill legalized contracts for payments in coin. The same bill was again introduced by Schenck March 12, and passed the House the same day by a vote of 93 to 48, 52 not voting. A bill of somewhat different character had been introduced in the Senate March 9. On the 15th the Senate bill was laid aside, and the House bill, without the second section, passed, the final vote being 42 to 13.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XVI., 1. For the proceedings see the *House and Senate Journals*, 40th Cong., 3d Sess., and 41st Cong., 1st Sess., and the *Cong. Globe*.

An Act to strengthen the public Credit.

Be it enacted . . . , That in order to remove any doubt as to the purpose of the government to discharge all just obligations to the public creditors, and to settle conflicting questions and interpretations of the laws by virtue of which such obligations have been contracted, it is hereby provided and declared that the faith of the United States is solemnly pledged to the payment in coin or its equivalent of all the obligations of the United States not bearing interest, known as United States notes, and of all the interest-bearing obligations of the United States, except in cases where the law authorizing the issue of any such obligation has expressly provided that the same may be paid in lawful money or other currency than gold and silver. But none of said interest-bearing obligations not already due shall be redeemed or paid before maturity unless at such time United States notes shall be

convertible into coin at the option of the holder, or unless at such time bonds of the United States bearing a lower rate of interest than the bonds to be redeemed can be sold at par in coin. And the United States also solemnly pledges its faith to make provision at the earliest practicable period for the redemption of the United States notes in coin.

No. 164. Submission of the Constitutions of Virginia, Mississippi, and Texas

April 10, 1869

In a message of April 7, 1869, President Grant recommended that provision be made for a vote in Virginia on the State constitution agreed upon by a convention April 17, 1868, and for the election of State officers, the State to be restored on the approval of the constitution by Congress. He further raised the question whether the rejected constitution of Mississippi should not be resubmitted. A bill to give effect to this recommendation, and including Texas, was reported in the House the next day from the Committee on Reconstruction, and passed with amendments by a vote of 125 to 25, 47 not voting. The Senate, by a vote of 30 to 20, added the provision of section 6 of the act, together with other amendments. The final vote in the Senate was 44 to 9. The House, under suspension of the rules, concurred in the Senate amendments, the vote being 108 to 39, 54 not voting. Proclamations submitting the constitutions of the States to the voters were issued, for Virginia, May 14, for Mississippi, July 13, and for Texas, July 15.

References. — *Text* in *U.S. Statutes at Large*, XVI., 40, 41. For the proceedings see the *House and Senate Journals*, 41st Cong., 1st Sess., and the *Cong. Globe*. The bill reported April 8 is in the *Globe*. On Canby's course in Virginia see *Senate Exec. Doc.* 13, 41st Cong., 2d Sess. On conditions in Virginia see *Senate Exec. Doc.* 13, 41st Cong., 2d Sess.; in Texas, *House Misc. Docs.* 57 *and* 127, and *Senate Misc. Doc.* 109, 40th Cong., 2d Sess.

An Act authorizing the Submission of the Constitutions of Virginia, Mississippi, and Texas, to a Vote of the People, and authorizing the Election of State Officers, provided by the said Constitutions, and Members of Congress.

Be it enacted . . . , That the President of the United States, at such time as he may deem best for the public interest, may submit the constitution which was framed by the convention which

met in Richmond, Virginia, on Tuesday, . . . [December 3, 1867] . . . , to the voters of said State, registered at the date of said submission, for ratification or rejection; and may also submit to a separate vote such provisions of said constitution as he may deem best, such vote to be taken either upon each of the said provisions alone, or in connection with the other portions of said constitution, as the President may direct.

SEC. 2. *And be it further enacted*, That at the same election the voters of said State may vote for and elect members of the general assembly of said State, and all the officers of said State provided for by the said constitution, and members of Congress; and the officer commanding the district of Virginia shall cause the lists of registered voters of said State to be revised, enlarged, and corrected prior to such election, according to law, and for that purpose may appoint such registrars as he may deem necessary. And said elections shall be held and returns thereof made in the manner provided by the acts of Congress commonly called the reconstruction acts.

SEC. 3. [Similar provisions for Texas]; *Provided, also*, That no election shall be held in said State of Texas for any purpose until the President so directs.

SEC. 4. [Similar provisions for Mississippi.]

SEC. 5. *And be it further enacted*, That if either of said constitutions shall be ratified at such election, the legislature of the State so ratifying, elected as provided for in this act, shall assemble at the capital of said State on the fourth Tuesday after the official promulgation of such ratification by the military officer commanding in said State.

SEC. 6. *And be it further enacted*, That before the States of Virginia, Mississippi, and Texas shall be admitted to representation in Congress, their several legislatures, which may be hereafter lawfully organized, shall ratify the fifteenth article, which has been proposed by Congress to the several States as an amendment to the Constitution of the United States.

SEC. 7. *And be it further enacted*, That the proceedings in any of said States shall not be deemed final or operate as a complete restoration thereof, until their action, respectively, shall be approved by Congress.

No. 165. Reconstruction of Georgia

December 22, 1869

A BILL "to enforce the fourteenth amendment to the Constitution and the laws of the United States in the State of Georgia, and to restore to that State the republican form of government elected under its new constitution," was introduced in the Senate March 5, 1869, by Edmunds of Vermont, and referred to the Committee on the Judiciary. The bill was reported with an amendment on the 17th, but without recommendation as to its passage, the committee being equally divided on that point. A bill with the same title was reported in the House April 7, from the Committee on Reconstruction. There was no further action on either bill during the session. A concurrent resolution of February 9 had provided, in the meantime, for the recognition of the electoral vote of Georgia. In his annual message of December 6, President Grant called attention to the unseating of colored members of the legislature of Georgia and the seating of persons disqualified by the fourteenth amendment, and submitted "whether it would not be wise, without delay, to enact a law authorizing the governor of Georgia to convene the members originally elected to the legislature, requiring each member to take the oath prescribed by the reconstruction acts, and none to be admitted who are ineligible under the third clause of the fourteenth amendment." The Edmunds bill was thereupon called up, and, together with a bill on the same subject introduced by Oliver P. Morton of Indiana, referred to the Committee on the Judiciary. December 13 the committee reported the Morton bill. On the 17th, by a vote of 38 to 15, section 8, "that the legislature of Georgia shall be regarded as provisional only, until the further action of Congress," was stricken out, and section 8 of the act inserted. The bill then passed, the vote being 45 to 9. The House passed the bill on the 21st by a vote of 121 to 51, 39 not voting.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XVI., 59, 60. For the proceedings see the *House and Senate Journals*, 41st Cong., 1st and 2d Sess., and the *Cong. Globe*. On political conditions in Georgia see *House Misc. Doc.* 52, 40th Cong., 3d Sess.; *House Exec. Doc.* 82, *Senate Exec. Docs.* 3 *and* 41, *Senate Reports* 58 *and* 75, 41st Cong., 2d Sess.

An Act to promote the Reconstruction of the State of Georgia.

Be it enacted . . . , That the governor of the State of Georgia be, and hereby is, authorized and directed, forthwith, by proclamation, to summon all persons elected to the general assembly of said State, . . . to appear on some day certain, to be named in said proclamation, at Atlanta, in said State; and thereupon the said general assembly of said State shall proceed to perfect its

organization in conformity with the Constitution and laws of the United States, according to the provisions of this act.

SEC. 2. *And be it further enacted*, That when the members so elected to said senate and house of representatives shall be convened, as aforesaid, each and every member and each and every person claiming to be elected as a member of said senate or house of representatives shall, in addition to taking the oath or oaths required by the constitution of Georgia, also take and subscribe and file in the office of the secretary of state of the State of Georgia one of the following oaths or affirmations, namely: "I do solemnly swear (or affirm, as the case may be) that I have never held the office, or exercised the duties of, a senator or representative in Congress, nor been a member of the legislature of any State of the United States, nor held any civil office created by law for the administration of any general law of a State, or for the administration of justice in any State or under the laws of the United States, nor held any office in the military or naval service of the United States, and thereafter engaged in insurrection or rebellion against the United States, or gave aid or comfort to its enemies, or rendered, except in consequence of direct physical force, any support or aid to any insurrection or rebellion against the United States, nor held any office under, or given any support to, any government of any kind organized or acting in hostility to the United States, or levying war against the United States. So help me God . . ." Or the following oath or affirmation, namely: "I do solemnly swear (or affirm, as the case may be) that I have been relieved, by an act of the Congress of the United States, from disability as provided for by section three of the fourteenth amendment to the Constitution of the United States. So help me God . . ." And every person claiming to be so elected, who shall refuse or decline or neglect or be unable to take one of said oaths or affirmations above provided, shall not be admitted to a seat in said senate or house of representatives, or to a participation in the proceedings thereof, but shall be deemed ineligible to such seats.

* * * * * * * *

SEC. 4. *And be it further enacted*, That the persons elected, as aforesaid, and entitled to compose such legislature, and who shall comply with the provisions of this act, by taking one of the oaths or affirmations above prescribed, shall thereupon pro-

ceed, in said senate and house of representatives to which they have been elected respectively, to reorganize said senate and house of representatives, respectively, by the election and qualification of the proper officers of each house.

* * * * * * * *

SEC. 6. *And be it further enacted*, That it is hereby declared that the exclusion of any person or persons elected as aforesaid, and being otherwise qualified, from participation in the proceedings of said senate or house of representatives, upon the ground of race, color, or previous condition of servitude, would be illegal, and revolutionary, and is hereby prohibited.

SEC. 7. *And be it further enacted*, That upon the application of the governor of Georgia, the President of the United States shall employ such military or naval forces of the United States as may be necessary to enforce and execute the preceding provisions of this act.

SEC. 8. *And be it further enacted*, That the legislature shall ratify the fifteenth amendment proposed to the Constitution of the United States before senators and representatives from Georgia are admitted to seats in Congress.

No. 166. Admission of Virginia to Representation in Congress

January 26, 1870

THE annual message of President Grant, December 6, 1869, urged the admission of Virginia to representation, but stated that the results of the recent elections in Mississippi and Texas were not yet known. To the proposition to rehabilitate Virginia there was strong opposition, but the wish of the President prevailed. A bill to give effect to the recommendation was reported January 11, 1870, from the Committee on Reconstruction. On the 14th a substitute offered by Bingham was agreed to by a vote of 98 to 95, 17 not voting, and the bill passed, the final vote being 142 to 49, 19 not voting. The Senate added various amendments imposing conditions and restrictions, and passed the bill on the 21st by a vote of 47 to 10. On the 24th the House concurred in the Senate amendments, the vote being 136 to 58, 16 not voting. July 28 the military authority in Virginia ceased. Acts of February 23 and March 30 provided in similar terms for the restoration of Mississippi and Texas, and the military authority in those States was withdrawn.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XVI., 62, 63. For the proceedings see the *House and Senate Journals*, 41st Cong., 2d Sess., and the *Cong. Globe*.

An Act to admit the State of Virginia to Representation in the Congress of the United States.

WHEREAS the people of Virginia have framed and adopted a constitution of State government which is republican; and whereas the legislature of Virginia elected under said constitution have ratified the fourteenth and fifteenth amendments to the Constitution of the United States; and whereas the performance of these several acts in good faith was a condition precedent to the representation of the State in Congress: Therefore,

Be it enacted . . . , That the said State of Virginia is entitled to representation in the Congress of the United States: *Provided*, That before any member of the legislature of said State shall take or resume his seat, or any officer of said State shall enter upon the duties of his office, he shall take, and subscribe, and file in the office of the secretary of state of Virginia, for permanent preservation, an oath[1] in the form following: "I, ——— ———, do solemnly swear that I have never taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, and afterward engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof, so help me God"; or such person shall in like manner take, subscribe, and file the following oath: "I, ——— ———, do solemnly swear that I have, by act of Congress of the United States, been relieved from the disabilities imposed upon me by the fourteenth amendment of the Constitution of the United States, so help me God"; . . . *And provided further*, That every such person who shall neglect for the period of thirty days next after the passage of this act to take, subscribe, and file such oath as aforesaid, shall be deemed and taken, to all intents and purposes, to have vacated his office: *And provided further*, That

[1] An amending act of February 1, 1870, provided for the usual alternative of affirmation. — ED.

the State of Virginia is admitted to representation in Congress as one of the States of the Union upon the following fundamental conditions: First, That the Constitution of Virginia shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote who are entitled to vote by the Constitution herein recognized, except as a punishment for such crimes as are now felonies at common law, whereof they shall have been duly convicted under laws equally applicable to all the inhabitants of said State: *Provided*, That any alteration of said Constitution, prospective in its effects, may be made in regard to the time and place of residence of voters. Second, That it shall never be lawful for the said State to deprive any citizen of the United States, on account of his race, color, or previous condition of servitude, of the right to hold office under the constitution and laws of said State, or upon any such ground to require of him any other qualifications for office than such as are required of all other citizens. Third, That the constitution of Virginia shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the school rights and privileges secured by the constitution of said State.

No. 167. Fifteenth Amendment to the Constitution

March 30, 1870

"THE evident and complete inefficacy of the second section of the [fourteenth] amendment was the reason for the introduction of the fifteenth amendment" (Johnston). As in the case of the previous amendments, various propositions were submitted, while the discussion of the political and constitutional theories embodied in the proposed amendment took a wide range. February 17, 1869, the Senate, after long debate, passed, by a vote of 35 to 11, a joint resolution for the submission of an amendment to the Constitution reported from the Committee on the Judiciary January 15. February 20 the resolution in amended form passed the House, the vote being 140 to 37, 46 not voting. The Senate, by a vote of 32 to 17, disagreed to the House amendment. The conference committee rejected the amendment of the House and agreed to the Senate resolution, except the words "and to hold office," in section 1. The amendment was rejected by New Jersey, Dela-

ware, Maryland, Kentucky, Oregon, and California, and was not acted on by Tennessee. Georgia and Ohio at first rejected it, but subsequently ratified it. The ratification of New York was later rescinded. A proclamation declaring the amendment in force was issued March 30, 1870.

REFERENCES. — *Text* in *Revised Statutes* (ed. 1878), 32. For the proceedings of Congress see the *House and Senate Journals*, 40th Cong., 2d Sess., and the *Cong. Globe*. Votes of State legislatures on ratification are collected in McPherson, *Reconstruction*, 488–498, 557–562.

ARTICLE XV.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

No. 168. Act to enforce the Fifteenth Amendment

May 31, 1870

A BILL to enforce the right of citizens of the United States to vote was introduced in the House February 21, 1870, by Bingham of Ohio, and referred to the Committee on the Judiciary. May 9 a substitute was reported and the bill recommitted. The substitute measure was again reported May 16, and passed the same day, the vote being 131 to 43, 54 not voting. May 20 the Senate, after an all-night session, passed a substitute by a vote of 43 to 8, 21 not voting. The House disagreed to the Senate amendment, and a conference committee settled the final form of the bill. The report of the conference committee was agreed to by the Senate on the 25th by a vote of 48 to 11, and by the House on the 27th by a vote of 133 to 58, 39 not voting.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XVI., 140–146. For the proceedings see the *House and Senate Journals*, 41st Cong., 2d Sess., and the *Cong. Globe*. The House substitute of May 9 is in the *Globe* for May 16; the text of the Senate bill is in *ibid.*, May 20. Part of the act followed a report on New York election frauds, *House Report* 31, 40th Cong., 3d Sess. On general political conditions in the South see *House Report* 37, 41st Cong., 3d Sess.; *Senate Report* 1, 42d Cong., 1st Sess.; *House Exec. Doc.* 268, 42d Cong., 2d Sess.; *House Reports* 101 *and* 261, 43d Cong., 2d Sess. The Congressional documents contain numerous reports on affairs in the different States.

An Act to enforce the Right of Citizens of the United States to vote in the several States of this Union, and for other purposes.

Be it enacted . . . , That all citizens of the United States who are or shall be otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

SEC. 2. *And be it further enacted*, That if by or under the authority of the constitution or laws of any State, or the laws of any Territory, any act is or shall be required to be done as a prerequisite or qualification for voting, and by such constitution or laws persons or officers are or shall be charged with the performance of duties in furnishing to citizens an opportunity to perform such prerequisite, or to become qualified to vote, it shall be the duty of every such person and officer to give to all citizens of the United States the same and equal opportunity to perform such prerequisite, and to become qualified to vote without distinction of race, color, or previous condition of servitude; [penalty for refusal].

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SEC. 4. *And be it further enacted*, That if any person, by force, bribery, threats, intimidation, or other unlawful means, shall hinder, delay, prevent, or obstruct, or shall combine and confederate with others to hinder, . . . [&c.], any citizen from doing any act required to be done to qualify him to vote or from voting at any election as aforesaid, such person shall for every such offence forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, . . . and shall also for every such offence be guilty of a misdemeanor, and shall, on conviction thereof, be fined not less than five hundred dollars, or be imprisoned not less than one month and not more than one year, or both, at the discretion of the court.

SEC. 5. *And be it further enacted*, That if any person shall prevent, hinder, control, or intimidate, or shall attempt to pre-

vent . . . [&c.], any person from exercising or in exercising the right of suffrage, to whom the right of suffrage is secured or guaranteed by the fifteenth amendment to the Constitution of the United States, by means of bribery, threats, or threats of depriving such person of employment or occupation, or of ejecting such person from rented house, lands, or other property, or by threats of refusing to renew leases or contracts for labor, or by threats of violence to himself or family, such person so offending shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be fined not less than five hundred dollars, or be imprisoned not less than one month and not more than one year, or both, at the discretion of the court.

SEC. 6. *And be it further enacted*, That if two or more persons shall band or conspire together, or go in disguise upon the public highway, or upon the premises of another, with intent to violate any provision of this act, or to injure, oppress, threaten, or intimidate any citizen with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the Constitution or laws of the United States, or because of his having exercised the same, such persons shall be held guilty of felony, and, on conviction thereof, shall be fined or imprisoned, or both, at the discretion of the court, — the fine not to exceed five thousand dollars, and the imprisonment not to exceed ten years, — and shall, moreover, be thereafter ineligible to, and disabled from holding, any office or place of honor, profit, or trust created by the Constitution or laws of the United States.

* * * * * * * *

SEC. 13. *And be it further enacted*, That it shall be lawful for the President of the United States to employ such part of the land or naval forces of the United States, or of the militia, as shall be necessary to aid in the execution of judicial process issued under this act.

* * * * * * * *

SEC. 15. *And be it further enacted*, That any person who shall hereafter knowingly accept or hold any office under the United States, or any State to which he is ineligible under the third section of the fourteenth article of amendment of the Constitution of the United States, or who shall attempt to hold or exer-

cise the duties of any such office, shall be deemed guilty of a misdemeanor against the United States, and, upon conviction thereof before the circuit or district court of the United States, shall be imprisoned not more than one year, or fined not exceeding one thousand dollars, or both, at the discretion of the court.

SEC. 16. *And be it further enacted*, That all persons within the jurisdiction of the United States shall have the same right in every State and Territory in the United States to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and none other, any law, statute, ordinance, regulation, or custom to the contrary notwithstanding. . . .

* * * * * * * *

SEC. 18. [The Civil Rights Act of 1866 reënacted.]

SEC. 19. *And be it further enacted*, That if at any election for representative or delegate in the Congress of the United States any person shall knowingly personate and vote, or attempt to vote, in the name of any other person, whether living, dead, or fictitious; or vote more than once at the same election for any candidate for the same office; or vote at a place where he may not be lawfully entitled to vote; or vote without having a lawful right to vote; or do any unlawful act to secure a right or an opportunity to vote for himself or any other person; or by force, threat, menace, intimidation, bribery, reward, or offer, or promise thereof, or otherwise unlawfully prevent any qualified voter of any State of the United States of America, or of any Territory thereof, from freely exercising the right of suffrage, or by any such means induce any voter to refuse to exercise such right; or compel or induce by any such means, or otherwise, any officer of an election in any such State or Territory to receive a vote from a person not legally qualified or entitled to vote; or interfere in any manner with any officer of said elections in the discharge of his duties; or by any of such means, or other unlawful means, induce any officer of an election, or officer whose duty it is to ascertain, announce, or declare the result of any such election, or give or make any

certificate, document, or evidence in relation thereto, to violate or refuse to comply with his duty, or any law regulating the same; or knowingly and wilfully receive the vote of any person not entitled to vote, or refuse to receive the vote of any person entitled to vote; or aid, counsel, procure, or advise any such voter, person, or officer to do any act hereby made a crime, or to omit to do any duty the omission of which is hereby made a crime, or attempt to do so, every such person shall be deemed guilty of a crime, and shall for such crime be liable to prosecution in any court of the United States of competent jurisdiction, and, on conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment for a term not exceeding three years, or both, in the discretion of the court, and shall pay the costs of prosecution.

* * * * * * * *

No. 169. Act for Refunding the National Debt

July 14, 1870

In his annual report of December 6, 1869, the Secretary of the Treasury called attention to the fact that the bonds known as 5-20's, amounting to $1,602,671,100, were either redeemable or soon to become redeemable. A bill to provide for refunding the national debt was introduced in the Senate by Sumner January 12, 1870, and referred to the Committee on Finance, which reported February 3, through Sherman, a substitute. The matter formed one of the principal subjects of discussion for the remainder of the session. The substitute bill with amendments passed the Senate March 11, by a vote of 32 to 10. The House left the bill without action until July 1, when a substitute reported by Schenck, from the Committee of Ways and Means, was agreed to, the final vote being 129 to 42, 58 not voting. The chief difference between the two bills was in the character of the bonds to be issued. The Senate refused to accept the substitute of the House. A report of a conference committee, July 12, being the act as approved with an additional section requiring the deposit of registered bonds as security for bank circulation, was rejected by the House by a vote of 88 to 103. A second report was agreed to the next day, in the House by a vote of 139 to 54, 37 not voting, and in the Senate without a division. An amending act of January 20, 1871, increased the amount of five per cent bonds to $500,000,000, but without increasing the total issue.

References. — *Text* in *U.S. Statutes at Large*, XVI., 272–274. For the proceedings see the *House and Senate Journals*, 41st Cong., 2d Sess., and the *Cong. Globe*. On Sumner's bill see his remarks in the *Globe*, January 12; on the Senate substitute, Sherman's remarks, *ibid.*, February 28, and *Senate Report* 4. Cf. Sherman's strictures on the act in his *Recollections*, I, 451–458.

An Act to authorize the Refunding of the national Debt.

Be it enacted . . . , That the Secretary of the Treasury is hereby authorized to issue, in a sum or sums not exceeding in the aggregate two hundred million dollars, coupon or registered bonds of the United States, in such form as he may prescribe, and of denominations of fifty dollars, or some multiple of that sum, redeemable in coin of the present standard value, at the pleasure of the United States, after ten years from the date of their issue, and bearing interest, payable semiannually in such coin, at the rate of five per cent. per annum; also a sum or sums not exceeding in the aggregate three hundred million dollars of like bonds, the same in all respects, but payable at the pleasure of the United States, after fifteen years from the date of their issue, and bearing interest at the rate of four and a half per cent. per annum; also a sum or sums not exceeding in the aggregate one thousand million dollars of like bonds, the same in all respects, but payable at the pleasure of the United States, after thirty years from the date of their issue, and bearing interest at the rate of four per cent. per annum; all of which said several classes of bonds and the interest thereon shall be exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority. . . .

Sec. 2. *And be it further enacted*, That the Secretary of the Treasury is hereby authorized to sell and dispose of any of the bonds issued under this act, at not less than their par value for coin, and to apply the proceeds thereof to the redemption of any of the bonds of the United States outstanding, and known as five-twenty bonds, at their par value, or he may exchange the same for such five-twenty bonds, par for par; but the bonds hereby authorized shall be used for no other purpose whatsoever. . . .

* * * * * * * *

Sec. 4. *And be it further enacted*, That the Secretary of the Treasury is hereby authorized, with any coin in the treasury of the United States which he may lawfully apply to such purpose, or which may be derived from the sale of any of the bonds, the issue of which is provided for in this act, to pay at par and cancel any six per cent. bonds of the United States of the kind known as five-twenty bonds, which have become or shall hereafter become redeemable by the terms of their issue. . . .

* * * * * * * *

No. 170. Act for the Restoration of Georgia

July 15, 1870

A bill for the restoration of Georgia, similar in purport to the acts for the restoration of Mississippi and Texas, was reported in the House February 25, 1870, by Butler of Massachusetts, from the Committee on Reconstruction, and passed, March 8, by a vote of 115 to 71, 34 not voting. The Senate added section 2 of the act, and further amendments declaring the existing government of the State provisional, directing the holding of a new election, and authorizing the President to suppress disorder. The amended bill passed the Senate April 19, by a vote of 27 to 25. The bill was left without further action until June 24, when the House Committee on Reconstruction reported in favor of the passage of the House bill with amendments. The Senate refused to concur, and the final form of the bill was settled by a conference committee. The report of the committee was accepted by both houses July 14, without a division.

References. — *Text* in *U.S. Statutes at Large*, XVI., 363, 364. For the proceedings see the *House and Senate Journals*, 41st Cong., 2d Sess., and the *Cong. Globe*. On political conditions in Georgia see *House Exec. Doc.* 288.

An Act relating to the State of Georgia.

Be it enacted . . . , That the State of Georgia having complied with the reconstruction acts, and the fourteenth and fifteenth articles of amendments to the Constitution of the United States having been ratified in good faith by a legal legislature of said State, it is hereby declared that the State of Georgia is entitled to representation in the Congress of the United States. But

nothing in this act contained shall be construed to deprive the people of Georgia of the right to an election for members of the general assembly of said State, as provided for in the Constitution thereof; and nothing in this or any other act of Congress shall be construed to affect the term to which any officer has been appointed or any member of the general assembly elected as prescribed by the Constitution of the State of Georgia.

* * * * * * * *

No. 171. Supplementary Act to enforce the Fifteenth Amendment

February 28, 1871

A BILL to amend the act of May 31, 1870, commonly known as the "Force Bill," was introduced in the House January 9, 1871, by John C. Churchill of New York, and referred to the Committee on the Judiciary. February 15 a substitute offered by Bingham of Ohio was agreed to with amendments, and the bill passed, the final vote being 144 to 64, 32 not voting. The Senate passed the bill on the 24th without amendment by a vote of 39 to 10, 25 not voting. The act was further supplemented by a provision of the sundry civil appropriation act of June 10, 1872.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XVI., 433–440. For the proceedings see the *House and Senate Journals*, 41st Cong., 3d Sess., and the *Cong. Globe*. The amendatory provision of the act of June 10, 1872, is in MacDonald's *Select Statutes*, No. 95.

An Act to amend an Act approved . . . [May 31, 1870] . . . , *entitled "An Act to enforce the Rights of Citizens of the United States to vote in the several States of this Union, and for other Purposes."*

Be it enacted . . . , [Section 1 amends Section 20 of the act of May 31, 1870].

SEC. 2. *And be it further enacted*, That whenever in any city or town having upward of twenty thousand inhabitants, there shall be two citizens thereof who, prior to any registration of voters for an election for representative or delegate in the Congress of the United States, or prior to any election at which a

representative or delegate in Congress is to be voted for, shall make known, in writing, to the judge of the circuit court of the United States for the circuit wherein such city or town shall be, their desire to have said registration, or said election, or both, guarded and scrutinized, it shall be the duty of the said judge of the circuit court, within not less than ten days prior to said registration, if one there be, or, if no registration be required, within not less than ten days prior to said election, to open the said circuit court at the most convenient point in said circuit. And the said court, when so opened by said judge, shall proceed to appoint and commission, from day to day and from time to time, and under the hand of the said circuit judge, and under the seal of said court, for each election district or voting precinct in each and every such city or town as shall, in the manner herein prescribed, have applied therefor, and to revoke, change, or renew said appointment from time to time, two citizens, residents of said city or town, who shall be of different political parties, and able to read and write the English language, and who shall be known and designated as supervisors of election. And the said circuit court, when opened by the said circuit judge as required herein, shall therefrom and thereafter, and up to and including the day following the day of election, be always open for the transaction of business under this act, and the powers and jurisdiction hereby granted and conferred shall be exercised as well in vacation as in term time; and a judge sitting at chambers shall have the same powers and jurisdiction, including the power of keeping order and of punishing any contempt of his authority, as when sitting in court.

* * * * * * * *

SEC. 4. *And be it further enacted*, That it shall be the duty of the supervisors of election, appointed under this act, . . . to attend at all times and places fixed for the registration of voters, who, being registered, would be entitled to vote for a representative or delegate in Congress, and to challenge any person offering to register; to attend at all times and places when the names of registered voters may be marked for challenge, and to cause such names registered as they shall deem proper to be so marked; to make, when required, the lists, or either of them, provided for in section thirteen of this act, and verify the same;

and upon any occasion, and at any time when in attendance under the provisions of this act, to personally inspect and scrutinize such registry, and for purposes of identification to affix their or his signature to each and every page of the original list, and of each and every copy of any such list of registered voters, at such times, upon each day when any name may or shall be received, entered, or registered, and in such manner as will, in their or his judgment, detect and expose the improper or wrongful removal therefrom, or addition thereto, in any way, of any name or names.

SEC. 5. *And be it further enacted*, That it shall also be the duty of the said supervisors of election, . . . to attend at all times and places for holding elections of representatives or delegates in Congress, and for counting the votes cast at said elections; to challenge any vote offered by any person whose legal qualifications the supervisors, or either of them, shall doubt; to be and remain where the ballot-boxes are kept at all times after the polls are open until each and every vote cast at said time and place shall be counted, the canvass of all votes polled be wholly completed, and the proper and requisite certificates or returns made, whether said certificates or returns be required under any law of the United States, or any State, territorial, or municipal law, and to personally inspect and scrutinize, from time to time, and at all times, on the day of election, the manner in which the voting is done, and the way and method in which the poll-books, registry-lists, and tallies or check-books, whether the same are required by any law of the United States, or any State, territorial, or municipal law, are kept; and to the end that each candidate for the office of representative or delegate in Congress shall obtain the benefit of every vote for him cast, the said supervisors of election are, and each of them is, hereby required, in their or his respective election districts or voting precincts, to personally scrutinize, count, and canvass each and every ballot in their or his election district or voting precinct cast, whatever may be the indorsement on said ballot, or in whatever box it may have been placed or be found; to make and forward to the officer who, in accordance with the provisions of section thirteen of this act, shall have been designated as the chief supervisor of the judicial district in which the city or town wherein they or he

shall serve shall be, such certificates and returns of all such ballots as said officer may direct and require, and to attach to the registry list, and any and all copies thereof, and to any certificate, statement, or return, whether the same, or any part or portion thereof, be required by any law of the United States, or of any State, territorial, or municipal law, any statement touching the truth or accuracy of the registry, or the truth or fairness of the election and canvass, which the said supervisors of election, or either of them, may desire to make or attach, or which should properly and honestly be made or attached, in order that the facts may become known, any law of any State or Territory to the contrary notwithstanding.

SEC. 6. *And be it further enacted*, That the better to enable the said supervisors of election to discharge their duties, they are, and each of them is, hereby authorized and directed, in their or his respective election districts or voting precincts, on the day or days of registration, on the day or days when registered voters may be marked to be challenged, and on the day or days of election, to take, occupy, and remain in such position or positions, from time to time, whether before or behind the ballot-boxes, as will, in their judgment, best enable them or him to see each person offering himself for registration or offering to vote, and as will best conduce to their or his scrutinizing the manner in which the registration or voting is being conducted; and at the closing of the polls for the reception of votes, they are, and each of them is, hereby required to place themselves or himself in such position in relation to the ballot-boxes for the purpose of engaging in the work of canvassing the ballots in said boxes contained as will enable them or him to fully perform the duties in respect to such canvass provided in this act, and shall there remain until every duty in respect to such canvass, certificates, returns, and statements shall have been wholly completed, any law of any State or Territory to the contrary notwithstanding.

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SEC. 8. *And be it further enacted*, That whenever an election at which representatives or delegates in Congress are to be chosen shall be held in any city or town of twenty thousand inhabitants or upward, the marshal of the United States for

the district in which said city or town is situated shall have power, and it shall be his duty, on the application, in writing, of at least two citizens residing in any such city or town, to appoint special deputy marshals, whose duty it shall be, when required as provided in this act, to aid and assist the supervisors of election in the verification of any list of persons made under the provisions of this act, who may have registered, or voted, or either; to attend in each election district or voting precinct at the times and places fixed for the registration of voters, and at all times and places when and where said registration may by law be scrutinized, and the names of registered voters be marked for challenge; and also to attend, at all times for holding such elections, the polls of the election in such district or precinct. And the marshal and his general deputies, and such special deputies, shall have power, and it shall be the duty of such special deputies, to keep the peace, and support and protect the supervisors of elections in the discharge of their duties, preserve order at such places of registration and at such polls, prevent fraudulent registration and fraudulent voting thereat, or fraudulent conduct on the part of any officer of election, and immediately, either at said place of registration or polling-place, or elsewhere, and either before or after registering or voting, to arrest and take into custody, with or without process, any person who shall commit, or attempt or offer to commit, any of the acts or offences prohibited by this act, or the act hereby amended, or who shall commit any offence against the laws of the United States. . . .

* * * * * * * * *

SEC. 10. *And be it further enacted*, That whoever, with or without any authority, power, or process, or pretended authority, power, or process, of any State, territorial, or municipal authority, shall obstruct, hinder, assault, or by bribery, solicitation, or otherwise, interfere with or prevent the supervisors of election, or either of them, or the marshal or his general or special deputies, or either of them, in the performance of any duty required of them, or either of them, or which he or they, or either of them, may be authorized to perform by any law of the United States, whether in the execution of process or otherwise, or shall by any of the means before mentioned hinder or

prevent the free attendance and presence at such places of registration or at such polls of election, or full and free access and egress to and from any such place of registration or poll of election, or in going to and from any such place of registration or poll of election, or to and from any room where any such registration or election or canvass of votes, or of making any returns or certificates thereof, may be had, or shall molest, interfere with, remove, or eject from any such place of registration or poll of election, or of canvassing votes cast thereat, or of making returns or certificates thereof, any supervisor of election, the marshal, or his general or special deputies, or either of them, or shall threaten, or attempt, or offer so to do, or shall refuse or neglect to aid and assist any supervisor of election, or the marshal or his general or special deputies, or either of them, in the performance of his or their duties when required by him or them, or either of them, to give such aid and assistance, he shall be guilty of a misdemeanor, and liable to instant arrest without process, and on conviction thereof shall be punished by imprisonment not more than two years, or by fine not more than three thousand dollars, or by both such fine and imprisonment, and shall pay the costs of the prosecution. Whoever shall, during the progress of any verification of any list of the persons who may have registered or voted, and which shall be had or made under any of the provisions of this act, refuse to answer, or refrain from answering, or answering shall knowingly give false information in respect to any inquiry lawfully made, such person shall be liable to arrest and imprisonment as for a misdemeanor, and on conviction thereof shall be punished by imprisonment not to exceed thirty days, or by fine not to exceed one hundred dollars, or by both such fine and imprisonment, and shall pay the costs of the prosecution.

* * * * * * * *

Sec. 19. *And be it further enacted*, That all votes for representatives in Congress shall hereafter be by written or printed ballot, any law of any State to the contrary notwithstanding; and all votes received or recorded contrary to the provisions of this section shall be of none effect.[1]

[1] Amended by act of May 3, 1872 (*U.S. Stat. at Large*, XVII., 61). — Ed.

No. 172. Act to enforce the Fourteenth Amendment

April 20, 1871

A BILL to enforce the provisions of the fourteenth amendment was reported in the House March 28, 1871, by Samuel Shellabarger of Ohio, from the select committee to which had been referred the President's message of March 23 on the condition of affairs in the South. The bill formed the principal subject of debate until April 6, when, with amendments, it passed the House by a vote of 118 to 91, 18 not voting. The Senate added, among others, an amendment offered by Sherman making counties, cities, parishes, etc., liable for injuries done to any person by reason of his race or color, and on the 14th passed the bill, the vote being 45 to 19, 6 not voting. The House, by a vote of 45 to 132, 53 not voting, rejected the principal Senate amendment, and also refused, by a vote of 74 to 106, 50 not voting, to agree to a report of a conference committee retaining the objectionable section. A second conference committee reported a compromise in the terms of section 6 of the act. The report was agreed to April 19, in the House by a vote of 93 to 74, 63 not voting, and in the Senate by a vote of 36 to 13. A proclamation calling attention to the act as one of "extraordinary public importance" was issued May 3.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XVII., 13–15. For the proceedings see the *House and Senate Journals*, 42d Cong., 1st Sess., and the *Cong. Globe*. The "Ku Klux" report is *House Report* 22 and *Senate Report* 41, 42d Cong., 2d Sess.

An Act to enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for other Purposes.

Be it enacted . . . , That any person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress; such proceeding to be prosecuted in the several district or circuit courts of the United States, with and subject to the same rights of appeal, review upon error, and other remedies provided in like cases in

such courts, under the provisions of the . . . [Civil Rights Act] . . . , and the other remedial laws of the United States which are in their nature applicable in such cases.

SEC. 2. That if two or more persons within any State or Territory of the United States shall conspire together to overthrow, or to put down, or to destroy by force the government of the United States, or to levy war against the United States, or to oppose by force the authority of the government of the United States, or by force, intimidation, or threat to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, or by force, intimidation, or threat to prevent any person from accepting or holding any office or trust or place of confidence under the United States, or from discharging the duties thereof, or by force, intimidation, or threat to induce any officer of the United States to leave any State, district, or place where his duties as such officer might lawfully be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or to injure his person while engaged in the lawful discharge of the duties of his office, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duty, or by force, intimidation, or threat to deter any party or witness in any court of the United States from attending such court, or from testifying in any matter pending in such court fully, freely, and truthfully, or to injure any such party or witness in his person or property on account of his having so attended or testified, or by force, intimidation, or threat to influence the verdict, presentment, or indictment, of any juror or grand juror in any court of the United States, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or on account of his being or having been such juror, or shall conspire together, or go in disguise upon the public highway or upon the premises of another for the purpose, either directly or indirectly, of depriving any person or any class of persons of the equal protection of the laws, or of equal privileges or immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State from giving

or securing to all persons within such State the equal protection of the laws, or shall conspire together for the purpose of in any manner impeding, hindering, obstructing, or defeating the due course of justice in any State or Territory, with intent to deny to any citizen of the United States the due and equal protection of the laws, or to injure any person in his person or his property for lawfully enforcing the right of any person or class of persons to the equal protection of the laws, or by force, intimidation, or threat to prevent any citizen of the United States lawfully entitled to vote from giving his support or advocacy in a lawful manner towards or in favor of the election of any lawfully qualified person as an elector of President or Vice-President of the United States, or as a member of the Congress of the United States, or to injure any such citizen in his person or property on account of such support or advocacy, each and every person so offending shall be deemed guilty of a high crime, and, upon conviction thereof in any district or circuit court of the United States or district or supreme court of any Territory of the United States having jurisdiction of similar offences, shall be punished by a fine not less than five hundred nor more than five thousand dollars, or by imprisonment, with or without hard labor, as the court may determine, for a period of not less than six months nor more than six years, as the court may determine, or by both such fine and imprisonment as the court shall determine. . . .

SEC. 3. That in all cases where insurrection, domestic violence, unlawful combinations, or conspiracies in any State shall so obstruct or hinder the execution of the laws thereof, and of the United States, as to deprive any portion or class of the people of such State of any of the rights, privileges, or immunities, or protection, named in the Constitution and secured by this act, and the constituted authorities of such State shall either be unable to protect, or shall, from any cause, fail in or refuse protection of the people in such rights, such facts shall be deemed a denial by such State of the equal protection of the laws to which they are entitled under the Constitution of the United States; and in all such cases . . . it shall be lawful for the President, and it shall be his duty to take such measures, by the employment of the militia or the land and naval forces of the

United States, or of either, or by other means, as he may deem necessary for the suppression of such insurrection, domestic violence, or combinations. . . .

SEC. 4. That whenever in any State or part of a State the unlawful combinations named in the preceding section of this act shall be organized and armed, and so numerous and powerful as to be able, by violence, to either overthrow or set at defiance the constituted authorities of such State, and of the United States within such State, or when the constituted authorities are in complicity with, or shall connive at the unlawful purposes of, such powerful and armed combinations; and whenever, by reason of either or all of the causes aforesaid, the conviction of such offenders and the preservation of the public safety shall become in such district impracticable, in every such case such combinations shall be deemed a rebellion against the government of the United States, and during the continuance of such rebellion, and within the limits of the district which shall be so under the sway thereof, such limits to be prescribed by proclamation, it shall be lawful for the President of the United States, when in his judgment the public safety shall require it, to suspend the privileges of the writ of habeas corpus, to the end that such rebellion may be overthrown: *Provided*, That all the provisions of the second section of . . . [the Habeas Corpus Act of March 3, 1863] . . . , which relate to the discharge of prisoners other than prisoners of war, and to the penalty for refusing to obey the order of the court, shall be in full force so far as the same are applicable to the provisions of this section: *Provided further*, That the President shall first have made proclamation, as now provided by law, commanding such insurgents to disperse: *And provided also*, That the provisions of this section shall not be in force after the end of the next regular session of Congress.

SEC. 5. That no person shall be a grand or petit juror in any court of the United States upon any inquiry, hearing, or trial of any suit, proceeding, or prosecution based upon or arising under the provisions of this act who shall, in the judgment of the court, be in complicity with any such combination or conspiracy; and every such juror shall, before entering upon any such inquiry, hearing, or trial, take and subscribe an oath in

open court that he has never, directly or indirectly, counselled, advised, or voluntarily aided any such combination or conspiracy. . . .

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No. 173. Act removing Political Disabilities

May 22. 1872

May 13, 1872, the House having before it a number of bills for the removal of the political disabilities of the persons named therein, the rules were suspended, and a general bill for the removal of disabilities imposed by the fourteenth amendment was introduced by Butler of Massachusetts, from the Committee on the Judiciary, and passed. The Senate passed the bill on the 21st by a vote of 38 to 2. The debate was without special interest. The disabilities not provided for by this act were removed by an act of June 6, 1898.

References. — *Text* in *U.S. Statutes at Large*, XVII., 142. For the proceedings see the *House and Senate Journals*, 42d Cong., 1st Sess., and the *Cong. Record*.

An Act to remove political Disabilities imposed by the fourteenth Article of the Amendments of the Constitution of the United States.

Be it enacted . . . , (two-thirds of each house concurring therein), That all political disabilities imposed by the third section of the fourteenth article of amendments of the Constitution of the United States are hereby removed from all persons whomsoever, except Senators and Representatives of the thirty-sixth and thirty-seventh Congresses, officers in the judicial, military, and naval service of the United States, heads of departments, and foreign ministers of the United States.

No. 174. Coinage Act

February 12, 1873

THE need of a revision of the laws relating to the mints, assay offices, and coinage was suggested as early as 1866, and April 25, 1870, a report on the subject, prepared by John Jay Knox, comptroller of the currency, was submitted to Congress, together with the draft of a bill. A bill in accordance with this report was reported in the Senate December 19, 1870, by Sherman, and passed that body January 10, 1871. A substitute reported in the House February 25 was recommitted. A second bill to the same effect was introduced in the House March 3, by William D. Kelley of Pennsylvania, and referred to the Committee on Coinage, Weights, and Measures. The bill was not reported until January 9, 1872, and the next day was recommitted. A bill with similar title was reported February 9 by Hooper of Massachusetts, and also recommitted. The latter bill was taken up April 9, and May 27 a substitute offered by Hooper was passed under suspension of the rules. The Senate referred the bill to the Committee on Finance, and the session closed without further action. December 16 the bill was reported in the Senate, further amendments being reported January 7, 1873. The bill was taken up on the 17th, and passed with amendments the same day. The final form of the bill was the work of a conference committee. The omission of the standard silver dollar of 412½ grains from the list of coins led later to the charge that the act aimed to demonetize silver, and caused the advocates of silver to refer to the act as the "crime of 1873." Only those sections of the act giving the list of coins are inserted here.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XVII., 424–436, *passim*. For the proceedings see the *House and Senate Journals*, 41st Cong., 3d Sess., and 42d Cong., and the *Cong. Record;* see also the *Record*, 53d Cong., 1st Sess., pp. 1219–1224. Knox's report is *Senate Misc. Doc.* 132, 41st Cong., 2d Sess.; the correspondence connected with it is in *House Exec. Doc.* 307.

An Act revising and amending the Laws relative to the Mints, Assay-offices, and Coinage of the United States.

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SEC. 14. That the gold coins of the United States shall be a one-dollar piece, which, at the standard weight of twenty-five and eight-tenths grains, shall be the unit of value; a quarter-eagle, or two-and-a-half dollar piece; a three-dollar piece; a half-eagle, or five-dollar piece; an eagle, or ten-dollar piece; and a double eagle, or twenty-dollar piece . . . ; which coins shall be a legal tender in all payments at their nominal value when not below the standard weight and limit of tolerance provided in this act for the

single piece, and, when reduced in weight, below said standard and tolerance, shall be a legal tender at valuation in proportion to their actual weight. . . .

SEC. 17. That the silver coins of the United States shall be a trade-dollar, a half-dollar, or fifty-cent piece, a quarter-dollar, or twenty-five-cent piece, a dime, or ten-cent piece; . . . and said coins shall be a legal tender at their nominal value for any amount not exceeding five dollars in any one payment.

SEC. 16. That the minor coins of the United States shall be a five-cent piece, a three-cent piece, and a one-cent piece . . . ; which coins shall be a legal tender, at their nominal value, for any amount not exceeding twenty-five cents in any one payment.

SEC. 17. That no coins, either of gold, silver, or minor coinage, shall hereafter be issued from the mint other than those of the denominations, standards, and weights herein set forth.

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No. 175. Resumption of Specie Payments

January 14, 1875

ONE result of the financial crisis which began in September, 1873, was the introduction, in the next session of Congress, of an extraordinary number of bills relating to banks and the currency. A bill providing for the redemption and reissue of United States notes, with gradual payment of the notes in coin or bonds after January 1, 1876, was reported in the Senate by Sherman March 23, 1874, and passed that body April 6 and the House April 14, but was vetoed by President Grant. A bill to provide for the resumption of specie payments, prepared in the first instance by a committee of the Republican members of Congress, and submitted by them to the Senate Committee on Finance, was reported by Sherman December 21, and passed the Senate the next day by a vote of 32 to 14. The bill was taken up in the House January 7, 1875, and passed the same day, the vote being 136 to 98, 54 not voting. President Grant communicated his approval in a special message to the Senate, in which further legislation to make the law effective was suggested.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XVIII., 296. For the proceedings see the *House and Senate Journals*, 43d Cong., 2d Sess., and the *Cong. Record*. On resumption see Sherman, *Recollections*, I., chaps. 24–26; II., chaps. 30 and 36; annual reports of the Secretary of the Treasury (Sherman) for 1877–1879; *House Misc. Doc.* 48, 45th Cong., 2d Sess.

An act to provide for the resumption of specie payments.

Be it enacted . . . , That the Secretary of the Treasury is hereby authorized and required, as rapidly as practicable, to cause to be coined at the mints of the United States, silver coins of the denominations of ten, twenty-five, and fifty cents, of standard value, and to issue them in redemption of an equal number and amount of fractional currency of similar denominations, or, at his discretion, he may issue such silver coins through the mints, the subtreasuries, public depositaries, and post-offices of the United States; and, upon such issue, he is hereby authorized and required to redeem an equal amount of such fractional currency, until the whole amount of such fractional currency outstanding shall be redeemed.

SEC. 2. That so much of section . . . [3524] . . . of the Revised Statutes of the United States as provides for a charge of one-fifth of one per centum for converting standard gold bullion into coin is hereby repealed, and hereafter no charge shall be made for that service.

SEC. 3. That section . . . [5177] . . . of the Revised Statutes of the United States, limiting the aggregate amount of circulating-notes of national banking-associations, be, and is hereby, repealed; and each existing banking-association may increase its circulating-notes in accordance with existing law without respect to said aggregate limit; and new banking-associations may be organized in accordance with existing law without respect to said aggregate limit; and the provisions of law for the withdrawal and redistribution of national-bank currency among the several States and Territories are hereby repealed. And whenever, and so often, as circulating-notes shall be issued to any such banking-association, so increasing its capital or circulating-notes, or so newly organized as aforesaid, it shall be the duty of the Secretary of the Treasury to redeem the legal-tender United States notes in excess only of three hundred million of dollars, to the amount of eighty per centum of the sum of national-bank notes so issued to any such banking-association as aforesaid, and to continue such redemption as such circulating-notes are issued until there shall be outstanding the sum of three hundred million dollars of such legal-tender United States notes, and no more. And on

and after . . . [January 1, 1879] . . . , the Secretary of the Treasury shall redeem, in coin, the United States legal-tender notes then outstanding on their presentation for redemption, at the office of the assistant treasurer of the United States in the city of New York,[1] in sums of not less than fifty dollars. And to enable the Secretary of the Treasury to prepare and provide for the redemption in this act authorized or required, he is authorized to use any surplus revenues, from time to time, in the Treasury not otherwise appropriated, and to issue, sell, and dispose of, at not less than par, in coin, either of the descriptions of bonds of the United States described in the . . . [Funding Act of July 14, 1870] . . . , with like qualities, privileges, and exemptions, to the extent necessary to carry this act into full effect, and to use the proceeds thereof for the purposes aforesaid. . . .

No. 176. Second Civil Rights Act

March 1, 1875

An amendment offered by Sumner to the amnesty act of May 22, 1872 [No. 173], forbidding discrimination against negroes in certain public places and elsewhere, was lost by a vote of 29 to 30. A bill of similar purport was called up in the Senate December 11, 1872, and passed over. Another bill passed the Senate April 30, 1873, but failed in the House. A third bill was introduced in the House December 18, by Butler of Massachusetts, from the Committee on the Judiciary, and January 7, 1874, was recommitted. A fourth civil rights bill passed the Senate May 22, but was not acted on by the House. A substitute for Butler's bill was reported December 16, and February 4, 1875, passed the House with amendments, the vote being 162 to 100, 27 not voting. The bill was reported in the Senate on the 15th without amendment, and passed the same day by a vote of 38 to 26.

References. — *Text* in *U.S. Statutes at Large*, XVIII., 335–337. For the proceedings see the *House and Senate Journals*, 43d Cong., 2d Sess., and the *Cong. Record*.

An act to protect all citizens in their civil and legal rights.

Whereas, it is essential to just government we recognize the equality of all men before the law, and hold that it is the duty of government in its dealings with the people to mete out equal and

[1] An act of March 3, 1887, chap. 378, added San Francisco. — Ed.

exact justice to all, of whatever nativity, race, color, or persuasion, religious or political; and it being the appropriate object of legislation to enact great fundamental principles into law: Therefore,

Be it enacted . . . , That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters, and other places of public amusement; subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude.

SEC. 2. That any person who shall violate the foregoing section by denying to any citizen, except for reasons by law applicable to citizens of every race and color, and regardless of any previous condition of servitude, the full enjoyment of any of the accommodations, advantages, facilities, or privileges in said section enumerated, or by aiding or inciting such denial, shall, for every such offense, forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered in an action of debt, with full costs; and shall also, for every such offense, be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred nor more than one thousand dollars, or shall be imprisoned not less than thirty days nor more than one year . . .

SEC. 3. That the district and circuit courts of the United States shall have, exclusively of the courts of the several States, cognizance of all crimes and offenses against, and violations of, the provisions of this act . . .

SEC. 4. That no citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any State, on account of race, color, or previous condition of servitude; and any officer or other person charged with any duty in the selection or summoning of jurors who shall exclude or fail to summon any citizen for the cause aforesaid shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not more than five thousand dollars.

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No. 177. Electoral Count Act

January 29, 1877

THE result of the presidential election of 1876 turned on the counting of the electoral votes of South Carolina, Florida, Louisiana, and Oregon, from each of which States there were double returns. December 7, 1876, George W. McCrary of Iowa offered in the House a resolution for the appointment of a committee of five, to act with a similar committee of the Senate, with instructions to report a bill for the counting of the electoral vote. The Committee on the Judiciary, to which the resolution was referred, reported on the 14th a substitute increasing the number of members to seven, which resolution was agreed to. A similar committee of seven was appointed by the Senate on the 18th. A committee was also appointed in the Senate to investigate the recent election, and in the House to inquire into the powers of the House in regard to counting the electoral vote. January 18 the joint committee reported a bill to regulate the electoral count. The bill passed the Senate without amendment on the 24th by a vote of 47 to 17, and the House on the 26th by a vote of 191 to 86, 14 not voting. The approval of President Grant was communicated in a special message. The count began February 1, and the result was announced in the early morning of March 2. The result of the count showed 185 votes for Hayes and Wheeler, the Republican candidates, and 184 votes for Tilden and Hendricks, the Democratic candidates.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XIX., 227–229. For the proceedings see the *House and Senate Journals*, 44th Cong., 2d Sess., and the *Cong. Record*. The report of the commission is in the *Record, ibid.*, Vol. 5, Part IV.; it was also published separately. A large amount of documentary evidence was introduced in the debates. The other documentary literature is extensive.

An act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing . . . [March 4, 1877].

Be it enacted . . . , That the Senate and House of Representatives shall meet in the hall of the House of Representatives, at the hour of one o'clock post meridian, on the first Thursday in February, . . . [1877]; and the President of the Senate shall be their presiding officer. Two tellers shall be previously appointed on the part of the Senate, and two on the part of the House of Representatives, to whom shall be handed, as they are opened by the President of the Senate, all the certificates, and papers purporting to be certificates, of the electoral votes, which certificates and papers shall be opened, presented, and acted upon in the alpha-

betical order of the States, beginning with the letter A; and said tellers having then read the same in the presence and hearing of the two houses, shall make a list of the votes as they shall appear from the said certificates; and the votes having been ascertained and counted as in this act provided, the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote, and the names of the persons, if any, elected, which announcement shall be deemed a sufficient declaration of the persons elected President and Vice-President of the United States, and, together with a list of the votes, be entered on the journals of the two houses. Upon such reading of any such certificate or paper when there shall be only one return from a State, the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one member of the House of Representatives before the same shall be received. When all objections so made to any vote or paper from a State shall have been received and read, the Senate shall thereupon withdraw, and such objections shall be submitted to the Senate for its decision; and the Speaker of the House of Representatives shall, in like manner, submit such objections to the House of Representatives for its decision; and no electoral vote or votes from any State from which but one return has been received shall be rejected except by the affirmative vote of the two Houses. When the two Houses have voted, they shall immediately again meet, and the presiding officer shall then announce the decision of the question submitted.

SEC. 2. That if more than one return, or paper purporting to be a return from a State, shall have been received by the President of the Senate, purporting to be the certificates of electoral votes given at the last preceding election for President and Vice-President in such State, (unless they shall be duplicates of the same return,) all such returns and papers shall be opened by him in the presence of the two Houses when met as aforesaid, and read by the tellers, and all such returns and papers shall thereupon be submitted to the judgment and decision as to which is the true and lawful electoral vote of such State, of a commission constituted as follows, namely: During the session of each House on

the Tuesday next preceding the first Thursday in February . . . [1877] . . . , each House shall, by viva voce vote, appoint five of its members, who with the five associate justices of the Supreme Court of the United States, to be ascertained as hereinafter provided, shall constitute a commission for the decision of all questions upon or in respect of such double returns named in this section. On the Tuesday next preceding the first Thursday in February . . . [1877] . . . , or as soon thereafter as may be, the associate justices of the Supreme Court of the United States now assigned to the first, third, eighth, and ninth circuits shall select, in such manner as a majority of them shall deem fit, another of the associate justices of said court, which five persons shall be members of said commission; and the person longest in commission of said five justices shall be the president of said commission. . . . All the certificates and papers purporting to be certificates of the electoral votes of each State shall be opened, in the alphabetical order of the States, as provided in section one of this act; and when there shall be more than one such certificate or paper, as the certificates and papers from such State shall so be opened, (excepting duplicates of the same return,) they shall be read by the tellers, and thereupon the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one member of the House of Representatives before the same shall be received. When all such objections so made to any certificate, vote, or paper from a State shall have been received and read, all such certificates, votes, and papers so objected to, and all papers accompanying the same, together with such objections, shall be forthwith submitted to said commission, which shall proceed to consider the same, with the same powers, if any, now possessed for that purpose by the two Houses acting separately or together, and, by a majority of votes, decide whether any and what votes from such State are the votes provided for by the Constitution of the United States, and how many and what persons were duly appointed electors in such State, and may therein take into view such petitions, depositions, and other papers, if any, as shall, by the Constitution and now existing law, be competent and pertinent in such consideration; which decision shall be

made in writing, stating briefly the ground thereof, and signed by the members of said commission agreeing therein; whereupon the two houses shall again meet, and such decision shall be read and entered in the journal of each House, and the counting of the votes shall proceed in conformity therewith, unless, upon objection made thereto in writing by at least five Senators and five members of the House of Representatives, the two Houses shall separately concur in ordering otherwise, in which case such concurrent order shall govern. No votes or papers from any other State shall be acted upon until the objections previously made to the votes or papers from any State shall have been finally disposed of.

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SEC. 6. That nothing in this act shall be held to impair or affect any right now existing under the Constitution and laws to question, by proceeding in the judicial courts of the United States, the right or title of the person who shall be declared elected, or who shall claim to be President or Vice-President of the United States, if any such right exists.

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No. 178. Coinage of the Standard Silver Dollar

February 28, 1878

THE coinage act of February 12, 1873 [No. 174], omitted the silver dollar from the list of pieces thereafter to be coined, but retained the trade dollar. A bill to provide for the free and unlimited coinage of silver dollars was introduced in the House December 13, 1876, by Richard P. Bland of Missouri, as a substitute for a bill "to utilize the products of gold and silver mines," introduced June 3. The bill passed the House the same day by a vote of 167 to 53, 69 not voting. In the Senate the bill was referred to the Committee on Finance, which reported it January 16, 1877, without recommendation, pending the report of the silver commission. November 5, by a vote of 164 to 34, 92 not voting, the rules were suspended to allow Bland to introduce and the House to pass a free coinage bill.[1] The bill was taken up

[1] "The previous question being ordered and the rules suspended, a single vote would introduce the bill without a reference to a committee, and would pass it

in the Senate January 28 and debated until February 15. The Senate added sections 2 and 3 of the act, the provisos of section 1, and, on motion of William B. Allison of Iowa, the limitation on the amount of coinage, the vote on the latter amendment being 49 to 22. The final vote in the Senate was 48 to 21, 7 not voting. February 21 the House concurred in the Senate amendments. On the 28th the bill was vetoed by President Hayes, but was passed over the veto, in the House by a vote of 196 to 73, 23 not voting; in the Senate by a vote of 46 to 19, 11 not voting. The coinage provision of the act was repealed by section 5 of the act of July 14, 1890 [No. 182, *post*].

References. — *Text* in *U.S. Statutes at Large*, XX., 25, 26. For the proceedings see the *House and Senate Journals*, 45th Cong., 2d Sess., and the *Cong. Record*. See *House Misc. Doc.* 27; *Senate Exec. Doc.* 3, 50th Cong., 2d Sess.; Sherman, *Recollections*, II., chaps. 31 and 32, and annual report as Secretary of the Treasury, December, 1877.

An act to authorize the coinage of the standard silver dollar, and to restore its legal-tender character.

Be it enacted . . . , That there shall be coined, at the several mints of the United States, silver dollars of the weight of four hundred and twelve and a half grains Troy of standard silver, as provided in the act of . . . [January 18, 1837] . . . , on which shall be the devices and superscriptions provided by said act; which coins together with all silver dollars heretofore coined by the United States, of like weight and fineness, shall be a legal tender, at their nominal value, for all debts and dues public and private, except where otherwise expressly stipulated in the contract. And the Secretary of the Treasury is authorized and directed to purchase, from time to time, silver bullion, at the market price thereof, not less than two million dollars worth per month, nor more than four million dollars worth per month, and cause the same to be coined monthly, as fast as so purchased, into such dollars. . . . And any gain or seigniorage arising from this coinage shall be accounted for and paid into the Treasury, as provided under existing laws relative to the subsidiary coinage: *Provided*, That the amount of money at any one time invested in such silver bullion, exclusive of such resulting coin, shall not exceed five million dollars. . . .

Sec. 2. That immediately after the passage of this act, the President shall invite the governments of the countries composing the

without any power of amendment, without the usual reading at three separate times." (Sherman. *Recollections*, II., 603.)

Latin Union, so-called, and of such other European nations as he may deem advisable, to join the United States in a conference to adopt a common ratio between gold and silver, for the purpose of establishing, internationally, the use of bi-metallic money, and securing fixity of relative value between those metals; such conference to be held at such place, in Europe or in the United States, at such time within six months, as may be mutually agreed upon by the executives of the governments joining in the same, whenever the governments so invited, or any three of them, shall have signified their willingness to unite in the same.

The President shall, by and with the advice and consent of the Senate, appoint three commissioners, who shall attend such conference on behalf of the United States, and shall report the doings thereof to the President, who shall transmit the same to Congress.

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SEC. 3. That any holder of the coin authorized by this act may deposit the same with the Treasurer or any assistant treasurer of the United States, in sums not less than ten dollars, and receive therefor certificates of not less than ten dollars each, corresponding with the denominations of the United States notes. The coin deposited for or representing the certificates shall be retained in the Treasury for the payment of the same on demand. Said certificates shall be receivable for customs, taxes, and all public dues, and, when so received, may be reissued.

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No. 179. Civil Service Act

January 16, 1883

IN his annual message of December 5, 1870, President Grant urged the attention of Congress to "a reform in the civil service of the country." In accordance with this recommendation, the sundry civil appropriation act of March 3, 1871, authorized the President to prescribe regulations for admission to the civil service. A civil service commission was appointed, and for two years appropriations were made for its support. The continuance of the appropriations was urged by Grant, and again by President Hayes in his annual messages of 1879 and 1880, but without inducing congressional action. The assassination of President Garfield called public attention forcibly to the

evils of the existing system of appointment and removal, and the annual message of President Arthur, December 6, 1881, brought the subject of civil service reform strongly before Congress. A bill "to regulate and improve the civil service" was introduced in the Senate December 6, 1881, by George H. Pendleton of Ohio, and on January 11, 1882, was referred, together with a bill "to prevent extortion from persons in the public service, and bribery and coercion by such persons," to the Committee on the Civil Service and Retrenchment. The bill was reported with amendments March 29, the committee report to accompany it not being submitted until May 15. The session closed without further action. The Pendleton bill was taken up December 11 and formed the principal subject of debate until the 27th, when, with various amendments, it passed the Senate by a vote of 38 to 5, 33 not voting. The bill was reported in the House without amendment January 4, 1883, read three times and passed, the final vote being 155 to 46, 88 not voting.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XXII., 403–407. For the proceedings see the *House and Senate Journals*, 47th Cong., 1st and 2d Sess., and the *Cong. Record*. Pendleton's report of May 15 in *Senate Report* 576. The annual reports of the Civil Service Commission are the primary authorities on the operation of the act; see also the *Proceedings* of the National Civil Service Reform League. The pamphlet and periodical literature is extensive. On the earlier history of the movement see *House Report* 47, 40th Cong., 2d Sess. (Jenckes's report); *Senate Exec. Doc.* 10, 42d Cong., 2d Sess., and *Senate Exec. Doc.* 53 (same in *House Exec. Doc.* 221), 43d Cong., 1st Sess. (commission reports); *Senate Report* 289, 44th Cong., 1st Sess. (Boutwell's report); *House Exec. Doc.* 1, Part 1, 46th Cong., 2d Sess. (Eaton's report); *House Exec. Doc.* 1, Part 8, *ibid.*, and *House Exec. Doc.* 94, 46th Cong., 3d Sess. (New York regulations); *Senate Report* 872, 46th Cong., 3d Sess (Pendleton's report). See also *Senate Report* 2373, 50th Cong., 1st Sess.

An act to regulate and improve the civil service of the United States.

Be it enacted . . . , That the President is authorized to appoint, by and with the advice and consent of the Senate, three persons, not more than two of whom shall be adherents of the same party, as Civil Service Commissioners, and said three commissioners shall constitute the United States Civil Service Commission. Said commissioners shall hold no other official place under the United States.

* * * * * * * *

SEC. 2. That it shall be the duty of said commissioners:

FIRST. To aid the President, as he may request, in preparing suitable rules for carrying this act into effect, and when said rules shall have been promulgated it shall be the duty of all officers of the United States in the departments and offices to which any

such rules may relate to aid, in all proper ways, in carrying said rules, and any modifications thereof, into effect.

SECOND. And, among other things, said rules shall provide and declare, as nearly as the conditions of good administration will warrant, as follows:

First, for open, competitive examinations for testing the fitness of applicants for the public service now classified or to be classified hereunder. Such examinations shall be practical in their character, and so far as may be shall relate to those matters which will fairly test the relative capacity and fitness of the persons examined to discharge the duties of the service into which they seek to be appointed.

Second, that all the offices, places, and employments so arranged or to be arranged in classes shall be filled by selections according to grade from among those graded highest as the results of such competitive examinations.

Third, appointments to the public service aforesaid in the departments at Washington shall be apportioned among the several States and Territories and the District of Columbia upon the basis of population as ascertained at the last preceding census. . . .

Fourth, that there shall be a period of probation before any absolute appointment or employment aforesaid.

Fifth, that no person in the public service is for that reason under any obligations to contribute to any political fund, or to render any political service, and that he will not be removed or otherwise prejudiced for refusing to do so.

Sixth, that no person in said service has any right to use his official authority or influence to coerce the political action of any person or body.

Seventh, there shall be non-competitive examinations in all proper cases before the commission, when competent persons do not compete, after notice has been given of the existence of the vacancy, under such rules as may be prescribed by the commissioners as to the manner of giving notice.

Eighth, that notice shall be given in writing by the appointing power to said commission of the persons selected for appointment or employment from among those who have been examined, of the place of residence of such persons, of the rejection of any such persons after probation, of transfers, resignations, and re-

movals, and of the date thereof, and a record of the same shall be kept by said commission. . . .

THIRD. Said commission shall, subject to the rules that may be made by the President, make regulations for, and have control of, such examinations, and, through its members or the examiners, it shall supervise and preserve the records of the same . . .

FOURTH. Said commission may make investigations concerning the facts, and may report upon all matters touching the enforcement and effects of said rules and regulations, and concerning the action of any examiner or board of examiners hereinafter provided for, and its own subordinates, and those in the public service, in respect to the execution of this act.

FIFTH. Said commission shall make an annual report to the President for transmission to Congress, showing its own action, the rules and regulations and the exceptions thereto in force, the practical effects thereof, and any suggestions it may approve for the more effectual accomplishment of the purposes of this act.

SEC. 3. That said commission is authorized to employ a chief examiner, a part of whose duty it shall be, under its direction, to act with the examining boards, so far as practicable, whether at Washington or elsewhere, and to secure accuracy, uniformity, and justice in all their proceedings, which shall be at all times open to him. . . . The commission shall, at Washington, and in one or more places in each State and Territory where examinations are to take place, designate and select a suitable number of persons, not less than three, in the official service of the United States, residing in said State or Territory, after consulting the head of the department or office in which such persons serve, to be members of boards of examiners. . . . Such boards of examiners shall be so located as to make it reasonably convenient and inexpensive for applicants to attend before them; and where there are persons to be examined in any State or Territory, examinations shall be held therein at least twice in each year. It shall be the duty of the collector, postmaster, and other officers of the United States, at any place outside of the District of Columbia where examinations are directed by the President or by said board to be held, to allow the reasonable use of the public buildings for holding such examinations, and in all proper ways to facilitate the same.

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SEC. 6. That within sixty days after the passage of this act it shall be the duty of the Secretary of the Treasury, in as near conformity as may be to the classification of certain clerks now existing under . . . [Section 163] . . . of the Revised Statutes, to arrange in classes the several clerks and persons employed by the collector, naval officer, surveyor, and appraisers, or either of them, or being in the public service, at their respective offices in each customs district where the whole number of said clerks and persons shall be all together as many as fifty. And thereafter, from time to time, on the direction of the President, said Secretary shall make the like classification or arrangement of clerks and persons so employed, in connection with any said office or offices, in any other customs district. And, upon like request, and for the purposes of this act, said Secretary shall arrange in one or more of said classes, or of existing classes, any other clerks, agents, or persons employed under his department in any said district not now classified; and every such arrangement and classification upon being made shall be reported to the President.

Second. Within said sixty days it shall be the duty of the Postmaster-General, in general conformity to said . . . [Section 163] . . . , to separately arrange in classes the several clerks and persons employed, or in the public service, at each post-office, or under any postmaster of the United States, where the whole number of said clerks and persons shall together amount to as many as fifty. And thereafter, from time to time, on the direction of the President, it shall be the duty of the Postmaster-General to arrange in like classes the clerks and persons so employed in the postal service in connection with any other post-office; and every such arrangement and classification upon being made shall be reported to the President.

Third. That from time to time said Secretary, the Postmaster-General, and each of the heads of departments mentioned in . . . [Section 158] . . . of the Revised Statutes, and each head of an office, shall, on the direction of the President, and for facilitating the execution of this act, respectively revise any then existing classification or arrangement of those in their respective departments and offices, and shall, for the purposes of the examination herein provided for, include in one or more of such classes, so far as practicable, subordinate places, clerks, and officers in the public

service pertaining to their respective departments not before classified for examination.

SEC. 7. That after the expiration of six months from the passage of this act no officer or clerk shall be appointed, and no person shall be employed to enter or be promoted in either of the said classes now existing, or that may be arranged hereunder pursuant to said rules, until he has passed an examination, or is shown to be specially exempted from such examination in conformity herewith. But nothing herein contained shall be construed to take from those honorably discharged from the military or naval service any preference conferred by . . . [Section 1754] . . . of the Revised Statutes, nor to take from the President any authority not inconsistent with this act conferred by . . . [Section 1753] . . . of said statutes; nor shall any officer not in the executive branch of the government, or any person merely employed as a laborer or workman, be required to be classified hereunder; nor, unless by direction of the Senate, shall any person who has been nominated for confirmation by the Senate be required to be classified or to pass an examination.

SEC. 8. That no person habitually using intoxicating beverages to excess shall be appointed to, or retained in, any office, appointment, or employment to which the provisions of this act are applicable.

SEC. 9. That whenever there are already two or more members of a family in the public service in the grades covered by this act, no other member of such family shall be eligible to appointment to any of said grades.

SEC. 10. That no recommendation of any person who shall apply for office or place under the provisions of this act which may be given by any Senator or member of the House of Representatives, except as to the character or residence of the applicant, shall be received or considered by any person concerned in making any examination or appointment under this act.

SEC. 11. That no Senator, or Representative, or Territorial Delegate of the Congress, or Senator, Representative, or Delegate elect, or any officer or employee of either of said houses, and no executive, judicial, military, or naval officer of the United States, and no clerk or employee of any department, branch or bureau of the executive, judicial, or military or naval service of

the United States, shall, directly or indirectly, solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever, from any officer, clerk, or employee of the United States, or any department, branch, or bureau thereof, or from any person receiving any salary or compensation from moneys derived from the Treasury of the United States.

SEC. 12. That no person shall, in any room or building occupied in the discharge of official duties by any officer or employee of the United States mentioned in this act, or in any navy-yard, fort, or arsenal, solicit in any manner whatever, or receive any contribution of money or any other thing of value for any political purpose whatever.

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No. 180. Interstate Commerce Act

February 4, 1887

A BILL to regulate interstate commerce was reported in the Senate January 18, 1886, by Shelby M. Cullom of Illinois, from the select committee appointed "to investigate and report on the subject of regulating the transportation of freights and passengers between the several States by railroads and water routes." Accompanying the bill was a voluminous report. The bill was recommitted, and a substitute reported February 16. The bill was taken up April 14, and formed one of the principal subjects of debate until May 12, when, with numerous amendments, the bill passed, the final vote being 47 to 4, 25 not voting. A substitute was reported in the House May 22. The bill was taken up July 21, and on the 30th the amended substitute passed the House by a vote of 192 to 41, 89 not voting. The session closed without further action beyond the appointment of a conference committee. The report of the committee was submitted December 15, and was accepted by the Senate January 14, 1887, by a vote of 43 to 15, and by the House January 21, by a vote of 219 to 41, 58 not voting. Extensive amendments to the act were made by an act of March 2, 1889. The scope of the commission, and its authority to compel testimony, were further defined by an act of February 10, 1891. An act of February 11, 1893, provided that no person should be excused from testifying before the commission, or from producing papers, etc., on the ground that such evidence would tend to incriminate him; but such witnesses were exempted from prosecution or penalty on account of acts concerning which they were required to give evidence.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XXIV., 379–387. For the proceedings see the *House and Senate Journals*, 49th Cong., 1st and 2d Sess., and the *Cong. Record*. The text of the House bill is in the *Record*, July 30. Cullom's report of January 18, 1886, is *Senate Report* 46, 49th Cong., 1st Sess. The annual reports of the Interstate Commerce Commission, and the debates in Congress on the amendatory acts, are the principal authorities for the workings of the statute. For decisions under the act to 1904 see Gould and Tucker, *Notes on the Revised Statutes*, II., 618–621; III., 704–706.

An act to regulate commerce.

Be it enacted . . . , That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however*, That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid.

The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage.

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or

handling of such property, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.

SEC. 2. That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

SEC. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

SEC. 4. That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being in-

cluded within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance: *Provided, however*, That upon application to the Commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act.

SEC. 5. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

SEC. 6. That every common carrier subject to the provisions of this act shall print and keep for public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any such common carrier has established and which are in force at the time upon its railroad, as defined by the first section of this act. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force upon such railroad, and shall also state separately the terminal charges and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates and fares and charges. Such schedules shall be plainly printed in large type, . . . and copies for the use of the public shall be kept in every depot or station upon any such railroad, in such places and in such form that they can be conveniently inspected.

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No advance shall be made in the rates, fares, and charges which have been established and published as aforesaid by any common carrier in compliance with the requirements of this sec-

tion, except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect. . . . Reductions in such published rates, fares, or charges may be made without previous public notice; but whenever any such reduction is made, notice of the same shall immediately be publicly posted. . . .

And when any such common carrier shall have established and published its rates, fares, and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any services in connection therewith, than is specified in such published schedule of rates, fares, and charges as may at the time be in force.

Every common carrier subject to the provisions of this act shall file with the Commission hereinafter provided for copies of its schedules of rates, fares, and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commission of all changes made in the same. Every such common carrier shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said Commission. . . .

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Sec. 7. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one con-

tinuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this act.

SEC. 8. That in case any common carrier subject to the provisions of this act shall do, cause to be done, or permit to be done any act, matter, or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

SEC. 9. That any person or persons claiming to be damaged by any common carrier subject to the provisions of this act may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this act, in any district or circuit court of the United States of competent jurisdiction . . . In any such action brought for the recovery of damages the court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

SEC. 10. That any common carrier subject to the provisions of this act, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this act prohibited or

declared to be unlawful, or who shall aid or abet therein, or who shall willfully omit or fail to do any act, matter, or thing in this act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this act to be done not to be done so, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense.

SEC. 11. That a Commission is hereby created and established to be known as the Inter-State Commerce Commission, which shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioners first appointed under this act shall continue in office for the term of two, three, four, five, and six years, respectively, from . . . [January 1, 1887] . . . , the term of each to be designated by the President; but their successors shall be appointed for terms of six years. . . . Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. Not more than three of the Commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any common carrier subject to the provisions of this act, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold such office. Said Commissioners shall not engage in any other business, vocation, or employment. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission.

SEC. 12. That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and for the purposes of this act the Commission shall have power to require the attendance and testimony

of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation, and to that end may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

* * * * * * * *

SEC. 13. That any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization complaining of anything done or omitted to be done by any common carrier subject to the provisions of this act in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the charges thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the Commission. If such common carrier, within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

Said Commission shall in like manner investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory, at the request of such commissioner or commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made. . . .

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SEC. 15. That if in any case in which an investigation shall be made by said Commission it shall be made to appear to the satisfaction of the Commission, either by the testimony of witnesses or other evidence, that anything has been done or omitted to be done in violation of the provisions of this act, or of any law cognizable by said Commission, by any common carrier, or that any

injury or damage has been sustained by the party or parties complaining, or by other parties aggrieved in consequence of any such violation, it shall be the duty of the Commission to forthwith cause a copy of its report in respect thereto to be delivered to such common carrier, together with a notice to said common carrier to cease and desist from such violation, or to make reparation for the injury so found to have been done, or both, within a reasonable time, to be specified by the Commission; and if, within the time specified, it shall be made to appear to the Commission that such common carrier has ceased from such violation of law, and has made reparation for the injury found to have been done, in compliance with the report and notice of the Commission, or to the satisfaction of the party complaining, a statement to that effect shall be entered of record by the Commission, and the said common carrier shall thereupon be relieved from further liability or penalty for such particular violation of law.

SEC. 16. That whenever any common carrier, as defined in and subject to the provisions of this act, shall violate or refuse or neglect to obey any lawful order or requirement of the Commission in this act named, it shall be the duty of the Commission, and lawful for any company or person interested in such order or requirement, to apply, in a summary way, by petition, to the circuit court of the United States sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience, as the case may be; and the said court shall have power to hear and determine the matter, on such short notice to the common carrier complained of as the court shall deem reasonable . . . When the subject in dispute shall be of the value of two thousand dollars or more, either party to such proceeding before said court may appeal to the Supreme Court of the United States. . . .

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SEC. 20. That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this act, to fix the time and prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount

of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipment; the number of employees and the salaries paid each class; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance-sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts with other common carriers, as the Commission may require; and the said Commission may, within its discretion, for the purpose of enabling it the better to carry out the purposes of this act, prescribe (if in the opinion of the Commission it is practicable to prescribe such uniformity and methods of keeping accounts) a period of time within which all common carriers subject to the provisions of this act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

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SEC. 22. That nothing in this act shall apply to the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the issuance of mileage, excursion, or commutation passenger tickets: nothing in this act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion; nothing in this act shall be construed to prevent railroads from giving free carriage to their own officers and employees, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; and nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies: *Provided*, That no pending litigation shall in any way be affected by this act.

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No. 181. Anti-Trust Act

July 2, 1890

SEVERAL bills for the regulation of trusts came before Congress during the session of 1888–1889, but none got beyond the stage of discussion. A bill "to declare unlawful trusts and combinations in restraint of trade and production" was introduced in the Senate December 4, 1889, by Sherman, and referred to the Committee on Finance, which reported it with amendments January 14, 1890. The bill was taken up February 27 and debated until March 27, when it was referred to the Committee on the Judiciary with instructions to report within twenty days. A substitute was reported April 2, and on the 8th passed the Senate with amendments. The House amended the bill so as to make unlawful "every contract or agreement entered into for the purpose of preventing competition in the sale or purchase of a commodity transported from one State to be sold in another." The Senate added further amendments, to which the House disagreed, and the bill went to a conference committee, which recommended that each house recede from its amendments. The acceptance of the report resulted in the passage of the Senate bill.

REFERENCES. — *Text* in *U.S. Statutes at Large*, XXVI., 209, 210. For the proceedings see the *House and Senate Journals*, 51st Cong., 1st Sess., and the *Cong. Record*. The text of Sherman's original bill is in the *Record*, February 27. The report of the House Committee on the Judiciary, April 25, is *House Report* 1707; for an earlier report on the investigation of trusts see *House Report* 3112, 50th Cong., 1st Sess. For decisions under the act to 1904 see Gould and Tucker, *Notes on the Revised Statutes*, II., 622, 623; III., 710–712.

An act to protect trade and commerce against unlawful restraints and monopolies.

Be it enacted . . .,

SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or

persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. . . .

* * * * * * * *

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district

in which the defendant resides or is found, without respect to the amount in controversy, and shall recover three fold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

SEC. 8. That the word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

No. 182. Silver Purchase Act

July 14, 1890

IN his annual message of December 3, 1889, President Harrison called attention to the decline in the market price of silver, and expressed fear of the effect of a further decline on the value of gold and silver dollars in commercial transactions. The accompanying report of the Secretary of the Treasury proposed the issue of treasury notes "against deposits of silver bullion at the market price of silver when deposited, payable on demand in such quantities of silver bullion as will equal in value, at the date of presentation, the number of dollars expressed on the face of the notes at the market price of silver, or in gold, at the option of the Government, or in silver dollars at the option of the holder"; together with "the repeal of the compulsory feature of the present coinage act." A bill authorizing the issue of treasury notes on deposits of silver bullion was introduced in the House January 20, 1890, by E. H. Conger of Iowa, and referred to the Committee on Coinage, Weights, and Measures. The bill was reported April 9. Another bill directing the purchase of silver bullion and the issue of treasury notes thereon was introduced by Conger April 24, and referred; June 5 an amended form of this bill was substituted for the bill already before the House, and the bill passed, the vote being 135 to 119, 73 not voting. In the meantime a bill prepared by the Secretary of the Treasury, in accordance with the recommendations of his annual report, had been introduced in the Senate January 20, by Morrill of Vermont, by request, had been taken up March 31, and was under consideration when the House bill was received. June 13 the House bill was substituted for the bill before the Senate. On the 17th a free coinage amendment, offered by Plumb of Kansas, was agreed to by a vote of 43 to 24, and the amended bill passed, the final vote being 42 to 25, 17 not voting. The House disagreed to the Senate amendments, and a conference committee settled the final form of the bill. The report of the committee was agreed to by the Senate July 10, by a vote of 39 to 26, and by the House July 12, by a vote of 122 to 90, 116 not voting. So much of the act as provided for the

purchase of silver bullion and the issue of notes thereon was repealed by the act of November 1, 1893 [No. 183].

REFERENCES. — *Text* in *U.S. Statutes at Large*, XXVI., 289, 290. For the proceedings see the *House and Senate Journals*, 51st Cong., 1st Sess., and the *Cong. Record*. The texts of the bills of April 24 and June 5 are in the *Record*, June 7, House proceedings. On Conger's bill of January 29 see *House Report* 1086. On the amount of coinage under the act see *Senate Doc.* 163, 55th Cong., 2d Sess.

An act directing the purchase of silver bullion and the issue of Treasury notes thereon, and for other purposes.

Be it enacted . . . , That the Secretary of the Treasury is hereby directed to purchase, from time to time, silver bullion to the aggregate amount of four million five hundred thousand ounces, or so much thereof as may be offered in each month, at the market price thereof, not exceeding one dollar for three hundred and seventy-one and twenty-five hundredths grains of pure silver, and to issue in payment for such purchases of silver bullion Treasury notes of the United States to be prepared by the Secretary of the Treasury, in such form and of such denominations, not less than one dollar nor more than one thousand dollars, as he may prescribe. . . .

SEC. 2. That the Treasury notes issued in accordance with the provisions of this act shall be redeemable on demand, in coin, at the Treasury of the United States, or at the office of any assistant treasurer of the United States, and when so redeemed may be reissued; but no greater or less amount of such notes shall be outstanding at any time than the cost of the silver bullion and the standard silver dollars coined therefrom, then held in the Treasury purchased by such notes; and such Treasury notes shall be a legal tender in payment of all debts, public and private, except where otherwise expressly stipulated in the contract, and shall be receivable for customs, taxes, and all public dues, and when so received may be reissued; and such notes, when held by any national banking association, may be counted as a part of its lawful reserve. That upon demand of the holder of any of the Treasury notes herein provided for the Secretary of the Treasury shall, under such regulations as he may prescribe, redeem such notes in gold or silver coin, at his discretion, it being the established policy of the United States to maintain the two metals

on a parity with each other upon the present legal ratio, or such ratio as may be provided by law.

SEC. 3. That the Secretary of the Treasury shall each month coin two million ounces of the silver bullion purchased under the provisions of this act into standard silver dollars until . . . [July 1, 1891] . . . , and after that time he shall coin of the silver bullion purchased under the provisions of this act as much as may be necessary to provide for the redemption of the Treasury notes herein provided for, and any gain or seigniorage arising from such coinage shall be accounted for and paid into the Treasury.

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SEC. 5. That so much of the act of . . . [February 28, 1878] . . . , entitled "An act to authorize the coinage of the standard silver dollar and to restore its legal-tender character," as requires the monthly purchase and coinage of the same into silver dollars of not less than two million dollars, nor more than four million dollars' worth of silver bullion, is hereby repealed.

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No. 183. Repeal of the Silver Purchase Act of 1890

November 1, 1893

A BILL to repeal the silver purchase act of July 14, 1890 [No. 182], was introduced in the House August 11, 1893, by William L. Wilson of West Virginia. A free coinage substitute was offered by Bland of Missouri. On motion of Bland it was agreed that the debate should continue for fourteen days, eleven days to be allotted to general debate under the rules of the last House, and the last three days to the consideration of the bill and amendments under the five-minute rule; that upon the close of the debate, votes should be taken in the following order: on free coinage of silver at the present ratio, then at the ratio of 17 to 1, then at the ratio of 18 to 1, then at the ratio of 19 to 1, and finally at the ratio of 20 to 1; and that in the event of these several votes resulting in the negative, the House should vote on an amendment to revive the so-called Bland-Allison act of February 28, 1878 [No. 178]. The bill was then taken up, and formed the principal subject of debate until August 28. The disastrous panic, due in part to the anxiety caused by the shrinkage of the gold reserve notwithstanding the rapid increase in the volume of silver certificates, made the debate one of extraordinary public

interest, while the advocates of silver carried on a vigorous agitation for free coinage in the event of a repeal of the compulsory purchase clause of the act of 1890. The votes taken August 28 resulted as follows: on the free coinage substitute, 125 to 226; on free coinage at the ratio of 17 to 1, 101 to 241; at 18 to 1, 103 to 240; at 19 to 1, 104 to 238; at 20 to 1, 122 to 222; on reviving the Bland-Allison act, 136 to 213. The bill was then read a third time and passed, the vote being 239 to 109, 5 not voting. The Senate had under consideration a bill to the same effect as the House bill, so far as repealing the purchase clause of the act of 1890 was concerned; August 29 this was reported by the Committee on Finance as a substitute for the House bill. The bill was not considered until October 30, when the substitute was agreed to and the bill passed, the final vote being 43 to 32. November 1, by a vote of 194 to 94, 65 not voting, the House concurred in the Senate amendment. A bill to "coin the seigniorage" was vetoed by President Cleveland May 27, 1894.

REFERENCES. — *Text* in *U. S. Statutes at Large*, XXVIII., 4, 5. For the proceedings see the *House and Senate Journals*, 53d Cong., 1st Sess., and the *Cong. Record*. Practically every aspect of the silver question was touched on in the debate.

An Act to repeal a part of . . . [the Silver Purchase Act of July 14, 1890].

Be it enacted . . . , That so much of the . . . [Silver Purchase Act of July 14, 1890] . . . , as directs the Secretary of the Treasury to purchase from time to time silver bullion to the aggregate amount of four million five hundred thousand ounces, or so much thereof as may be offered in each month at the market price thereof, not exceeding one dollar for three hundred and seventy-one and twenty-five one-hundredths grains of pure silver, and to issue in payment for such purchases Treasury notes of the United States, be, and the same is hereby, repealed. And it is hereby declared to be the policy of the United States to continue the use of both gold and silver as standard money, and to coin both gold and silver into money of equal intrinsic and exchangeable value, such equality to be secured through international agreement, or by such safeguards of legislation as will insure the maintenance of the parity in value of the coins of the two metals, and the equal power of every dollar at all times in the markets and in the payment of debts. And it is hereby further declared that the efforts of the Government should be steadily directed to the establishment of such a safe system of bimetallism as will maintain at all times the equal power of every dollar coined or issued by the United States, in the markets and in the payment of debts.

No. 184. Recognition of the Independence of Cuba

April 20, 1898

In his annual message of December 6, 1897, President McKinley reviewed the course of the insurrection which had been in progress in Cuba since February, 1895, but opposed the recognition of Cuban belligerency. A resolution recognizing the independence of Cuba, being the same as the resolution finally adopted, but without the fourth section, was reported in the Senate April 13, 1898, by Cushman K. Davis of Minnesota, from the Committee on Foreign Relations. An amendment offered on the 16th by David Turpie of Indiana, recognizing the Republic of Cuba "as the true and lawful government of that island," was agreed to by a vote of 51 to 37; and, with the further addition of the fourth section, offered as an amendment by Davis, the resolution passed. A resolution directing the President to intervene to put an end to the war in Cuba "to the end and with the purpose of securing permanent peace and order there and establishing by the free action of the people thereof a stable and independent government of their own," was reported in the House April 13, by Robert Adams of Pennsylvania, from the Committee on Foreign Affairs, as a substitute for numerous bills and resolutions previously submitted. A substitute recognizing the independence of the Republic of Cuba, offered by Albert S. Berry of Kentucky on behalf of the minority of the committee, was rejected by a vote of 150 to 190, and the resolution was agreed to, the final vote being 324 to 19. In the Senate, April 16, the House resolution was substituted for the resolution already before the Senate, and then amended by striking out the words of the House resolution and inserting the resolution of the Senate. On the 18th the House concurred with an amendment, offered by Nelson Dingley of Maine, striking out the clause recognizing the Republic of Cuba, the vote being 178 to 156. The Senate refusing to concur in the House amendment, the resolution went to a conference committee, which reported inability to agree, and a second committee settled the final form of the resolution. The report of the second committee was agreed to in the House by a vote of 311 to 6, and in the Senate by a vote of 42 to 35.

References. — *Text* in *U. S. Statutes at Large*, XXX., 738, 739. For the proceedings see the *House and Senate Journals*, 55th Cong., 2d Sess., and the *Cong. Record*. See also *Senate Report* 885; *Senate Doc.* 166 and *Senate Report* 1160, 54th Cong., 2d Sess.; and the various messages of the President. A large amount of documentary matter was printed in the *Record* in the course of the debate.

Joint Resolution for the recognition of the independence of the people of Cuba, demanding that the Government of Spain relinquish its authority and government in the Island of Cuba, and to withdraw its land and naval forces from Cuba and Cuban waters and directing the President of the

United States to use the land and naval forces of the United States to carry these resolutions into effect.

Whereas the abhorrent conditions which have existed for more than three years in the Island of Cuba, so near our own borders, have shocked the moral sense of the people of the United States, have been a disgrace to Christian civilization, culminating, as they have, in the destruction of a United States battle ship, with two hundred and sixty-six of its officers and crew, while on a friendly visit in the harbor of Havana, and can not longer be endured, as has been set forth by the President of the United States in his message to Congress of April eleventh, eighteen hundred and ninety-eight, upon which the action of Congress was invited: Therefore,

Resolved . . . , First. That the people of the Island of Cuba are, and of right ought to be, free and independent.

Second. That it is the duty of the United States to demand, and the Government of the United States does hereby demand, that the Government of Spain at once relinquish its authority and government in the Island of Cuba and withdraw its land and naval forces from Cuba and Cuban waters.

Third. That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry these resolutions into effect.

Fourth. That the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction, or control over said Island except for the pacification thereof, and asserts its determination, when that is accomplished, to leave the government and control of the Island to its people.

No. 185. Declaration of War

April 25, 1898

THE destruction of the battleship *Maine* in the harbor of Havana, on the night of February 15, 1898, was followed, March 9, by the appropriation of $50,000,000 for the national defence. An account of the *Maine* affair, together with the findings of the court of inquiry, was laid before Congress

by President McKinley in his message of March 28. April 11 the President asked for authority to intervene and end the war in Cuba. On the 22d a blockade of the north coast of Cuba, and of Cienfuegos on the south coast, was proclaimed, and on the next day 125,000 volunteers were called for under authority of the joint resolution of April 20 [No. 184]. On the 25th the President announced the withdrawal of the Spanish minister, and recommended a declaration of war. A joint resolution was at once introduced in the House by Adams of Pennsylvania, from the Committee on Foreign Affairs, and passed both houses the same day without divisions. A proclamation regarding neutrals was issued April 26. May 25 a call for 75,000 additional volunteers was issued. By a proclamation of June 27, the blockade was extended to the whole of the south coast of Cuba, and to San Juan, Porto Rico. Acts of July 8, 1898, and March 3, 1899, provided for the reimbursement to States of the expenses incurred by them on account of the war.

REFERENCES. — *Text* in *U. S. Statutes at Large*, XXX., 364. For the proceedings see the *House and Senate Journals*, 55th Cong., 2d Sess., and the *Cong. Record*. There was no debate in the House, and the discussion in the Senate was with closed doors. For the correspondence with Spain see the *Foreign Relations*, 1897 and 1898. The report of the *Maine* court of inquiry is *Senate Doc.* 207, 55th Cong., 2d Sess.; the report on the investigation of the War Department, *Senate Doc.* 221, 56th Cong., 1st Sess.; the "beef" inquiry, *Senate Doc.* 270, *ibid.* See also *Notes on the Spanish-American War. Senate Doc.* 288, *ibid.*

An Act declaring that war exists between the United States of America and the Kingdom of Spain.

Be it enacted . . . , First. That war be, and the same is hereby, declared to exist, and that war has existed since . . . [April 21, 1898] . . . , including said day, between the United States of America and the Kingdom of Spain.

Second. That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry this Act into effect.

No. 186. Annexation of the Hawaiian Islands

July 7, 1898

In January, 1893, Queen Liliuokalani of the Hawaiian Islands was forced to abdicate, and a provisional government was proclaimed, followed in July, 1894, by the establishment of a republic. The constitution of the republic expressly authorized a treaty of "political or commercial union" with the United States. A treaty of annexation, concluded in 1893, was withdrawn by President Cleveland. A second treaty was signed June 16, 1897, and ratified by the Senate of Hawaii. On the outbreak of the war with Spain the United States assumed to use the islands as a naval base. May 4, 1898, while the treaty of annexation was pending, Francis G. Newlands of Nevada introduced a joint resolution for annexation, the resolution being one of several similar propositions which had been submitted to Congress. The terms proposed by the resolution were substantially the same as those embodied in the pending treaty. The resolution was reported without amendment May 17, but was not taken up until June 11. On the 15th a substitute declaring against the acquisition of the islands by any foreign power, and guaranteeing their independence, was rejected by a vote of 96 to 204, and the resolution passed, the final vote being 209 to 91. The resolution was reported in the Senate June 17 without amendment, taken up on the 20th, and debated until July 6, when, by a vote of 42 to 21, it was agreed to. The formal transfer of the islands took place August 12. An act of April 30, 1900, provided a territorial form of government.

References. — *Text* in *U. S. Statutes at Large*, XXX., 750, 751. For the proceedings see the *House and Senate Journals*, 55th Cong., 2d Sess., and the *Cong. Record*. See also *Senate Report* 681 and *House Report* 1355. The report of the Hawaiian commission is *Senate Doc.* 16, 55th Cong., 3d Sess. On the earlier relations with Hawaii see *Senate Report* 227 and *House Exec. Doc.* 47, 53d Cong., 2d Sess.

Joint Resolution To provide for annexing the Hawaiian Islands to the United States.

Whereas the Government of the Republic of Hawaii having, in due form, signified its consent, in the manner provided by its constitution, to cede absolutely and without reserve to the United States of America all rights of sovereignty of whatsoever kind in and over the Hawaiian Islands and their dependencies, and also to cede and transfer to the United States the absolute fee and ownership of all public, Government, or Crown lands, public buildings or edifices, ports, harbors, military equipment, and all other public

property of every kind and description belonging to the Government of the Hawaiian Islands, together with every right and appurtenance thereunto appertaining: Therefore,

Resolved . . . , That said cession is accepted, ratified, and confirmed, and that the said Hawaiian Islands and their dependencies be, and they are hereby, annexed as a part of the territory of the United States and are subject to the sovereign dominion thereof, and that all and singular the property and rights hereinbefore mentioned are vested in the United States of America.

The existing laws of the United States relative to public lands shall not apply to such lands in the Hawaiian Islands; but the Congress of the United States shall enact special laws for their management and disposition: *Provided*, That all revenue from or proceeds of the same, except as regards such part thereof as may be used or occupied for the civil, military, or naval purposes of the United States, or may be assigned for the use of the local government, shall be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes.

Until Congress shall provide for the government of such islands all the civil, judicial, and military powers exercised by the officers of the existing government in said islands shall be vested in such person or persons and shall be exercised in such manner as the President of the United States shall direct; and the President shall have power to remove said officers and fill the vacancies so occasioned.

The existing treaties of the Hawaiian Islands with foreign nations shall forthwith cease and determine, being replaced by such treaties as may exist, or as may be hereafter concluded, between the United States and such foreign nations. The municipal legislation of the Hawaiian Islands, not enacted for the fulfillment of the treaties so extinguished, and not inconsistent with this joint resolution nor contrary to the Constitution of the United States nor to any existing treaty of the United States, shall remain in force until the Congress of the United States shall otherwise determine.

Until legislation shall be enacted extending the United States customs laws and regulations to the Hawaiian Islands the existing customs relations of the Hawaiian Islands with the United States and other countries shall remain unchanged.

The public debt of the Republic of Hawaii, lawfully existing at the date of the passage of this joint resolution, including the amounts due to depositors in the Hawaiian Postal Savings Bank, is hereby assumed by the Government of the United States; but the liability of the United States in this regard shall in no case exceed four million dollars. So long, however, as the existing Government and the present commercial relations of the Hawaiian Islands are continued as hereinbefore provided said Government shall continue to pay the interest on said debt.

There shall be no further immigration of Chinese into the Hawaiian Islands, except upon such conditions as are now or may hereafter be allowed by the laws of the United States; and no Chinese, by reason of anything herein contained, shall be allowed to enter the United States from the Hawaiian Islands.

The President shall appoint five commissioners, at least two of whom shall be residents of the Hawaiian Islands, who shall, as soon as reasonably practicable, recommend to Congress such legislation concerning the Hawaiian Islands as they shall deem necessary or proper.

Sec. 2. That the commissioners hereinbefore provided for shall be appointed by the President, by and with the advice and consent of the Senate.

* * * * * * * *

No. 187. Treaty of Paris

December 10, 1898

Overtures for peace between the United States and Spain were begun July 26, 1898, through Jules Cambon, the French ambassador, resulting, August 12, in the signing of a protocol and the suspension of hostilities. Commissioners on the part of the United States were named August 26, Senator George Gray of Delaware being appointed, September 9, in place of Justice Edward D. White, who declined to serve. The commissioners of the two countries met at Paris October 1, and December 10 concluded a treaty of peace. The Senate ratified the treaty February 6, 1899, and April 11 the treaty was proclaimed. The appropriation of $20,000,000 called for by Article III was made March 2.

References. — *Text* in *U. S. Statutes at Large*, XXX., 1754–1762. For the protocols and other documents see *Senate Doc.* 62, 55th Cong., 3d Sess.

Article I.

Spain relinquishes all claim of sovereignty over and title to Cuba.

And as the island is, upon its evacuation by Spain, to be occupied by the United States, the United States will, so long as such occupation shall last, assume and discharge the obligations that may under international law result from the fact of its occupation, for the protection of life and property.

Article II.

Spain cedes to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and the island of Guam in the Marianas or Ladrones.

Article III.

Spain cedes to the United States the archipelago known as the Philippine Islands, and comprehending the islands lying within the following line:

A line running from west to east along or near the twentieth parallel of north latitude, and through the middle of the navigable channel of Bachi, from the one hundred and eighteenth (118th) to the one hundred and twenty seventh (127th) degree meridian of longitude east of Greenwich, thence along the one hundred and twenty seventh (127th) degree meridian of longitude east of Greenwich to the parallel of four degrees and forty five minutes (4° 45′) north latitude, thence along the parallel of four degrees and forty five minutes (4° 45′) north latitude to its intersection with the meridian of longitude one hundred and nineteen degrees and thirty five minutes (119° 35′) east of Greenwich, thence along the meridian of longitude one hundred and nineteen degrees and thirty five minutes (119° 35′) east of Greenwich to the parallel of latitude seven degrees and forty minutes (7° 40′) north, thence along the parallel of latitude seven degrees and forty minutes (7° 40′) north to its intersection with the one hundred and sixteenth (116th) degree meridian of longitude east of Greenwich, thence by a direct line to the intersection of the tenth (10th)

degree parallel of north latitude with the one hundred and eighteenth (118th) degree meridian of longitude east of Greenwich, and thence along the one hundred and eighteenth (118th) degree meridian of longitude east of Greenwich to the point of beginning.

The United States will pay to Spain the sum of twenty million dollars ($20,000,000) within three months after the exchange of the ratifications of the present treaty.

ARTICLE IV.

The United States will, for the term of ten years from the date of the exchange of the ratifications of the present treaty, admit Spanish ships and merchandise to the ports of the Philippine Islands on the same terms as ships and merchandise of the United States.

ARTICLE V.

The United States will, upon the signature of the present treaty, send back to Spain, at its own cost, the Spanish soldiers taken as prisoners of war on the capture of Manila by the American forces. The arms of the soldiers in question shall be restored to them.

Spain will, upon the exchange of the ratifications of the present treaty, proceed to evacuate the Philippines, as well as the island of Guam, on terms similar to those agreed upon by the Commissioners appointed to arrange for the evacuation of Porto Rico and other islands in the West Indies, under the Protocol of August 12, 1898, which is to continue in force till its provisions are completely executed.

* * * * * * * *

ARTICLE VI.

Spain will, upon the signature of the present treaty, release all prisoners of war, and all persons detained or imprisoned for political offences, in connection with the insurrections in Cuba and the Philippines and the war with the United States.

Reciprocally, the United States will release all persons made prisoners of war by the American forces, and will undertake to obtain the release of all Spanish prisoners in the hands of the insurgents in Cuba and the Philippines.

The Government of the United States will at its own cost return to Spain and the Government of Spain will at its own cost return to the United States, Cuba, Porto Rico, and the Philippines, according to the situation of their respective homes, prisoners released or caused to be released by them, respectively, under this article.

Article VII.

The United States and Spain mutually relinquish all claims for indemnity, national and individual, of every kind, of either Government, or of its citizens or subjects, against the other Government, that may have arisen since the beginning of the late insurrection in Cuba and prior to the exchange of ratifications of the present treaty, including all claims for indemnity for the cost of the war.

The United States will adjudicate and settle the claims of its citizens against Spain relinquished in this article.

Article VIII.

In conformity with the provisions of Articles I, II, and III of this treaty, Spain relinquishes in Cuba, and cedes in Porto Rico and other islands in the West Indies, in the island of Guam, and in the Philippine Archipelago, all the buildings, wharves, barracks, forts, structures, public highways and other immovable property which, in conformity with law, belong to the public domain, and as such belong to the Crown of Spain.

And it is hereby declared that the relinquishment or cession, as the case may be, to which the preceding paragraph refers, cannot in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds, of provinces, municipalities, public or private establishments, ecclesiastical or civic bodies, or any other associations having legal capacity to acquire and possess property in the aforesaid territories renounced or ceded, or of private individuals, of whatsoever nationality such individuals may be.

The aforesaid relinquishment or session, as the case may be, includes all documents exclusively referring to the sovereignty relinquished or ceded that may exist in the archives of the Peninsula. Where any document in such archives only in part relates

to said sovereignty, a copy of such part will be furnished whenever it shall be requested. Like rules shall be reciprocally observed in favor of Spain in respect of documents in the archives of the islands above referred to.

In the aforesaid relinquishment or cession, as the case may be, are also included such rights as the Crown of Spain and its authorities possess in respect of the official archives and records, executive as well as judicial, in the islands above referred to, which relate to said islands or the rights and property of their inhabitants. Such archives and records shall be carefully preserved, and private persons shall without distinction have the right to require, in accordance with law, authenticated copies of the contracts, wills and other instruments forming part of notarial protocols or files, or which may be contained in the executive or judicial archives, be the latter in Spain or in the islands aforesaid.

ARTICLE IX.

Spanish subjects, natives of the Peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty, may remain in such territory or may remove therefrom, retaining in either event all their rights of property, including the right to sell or dispose of such property or of its proceeds; and they shall also have the right to carry on their industry, commerce and professions, being subject in respect thereof to such laws as are applicable to other foreigners. In case they remain in the territory they may preserve their allegiance to the Crown of Spain by making, before a court of record, within a year from the date of the exchange of ratifications of this treaty, a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside.

The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress.

ARTICLE X.

The inhabitants of the territories over which Spain relinquishes or cedes her sovereignty shall be secured in the free exercise of their religion.

ARTICLE XI.

The Spaniards residing in the territories over which Spain by this treaty cedes or relinquishes her sovereignty shall be subject in matters civil as well as criminal to the jurisdiction of the courts of the country wherein they reside, pursuant to the ordinary laws governing the same; and they shall have the right to appear before such courts, and to pursue the same course as citizens of the country to which the courts belong.

ARTICLE XII.

Judicial proceedings pending at the time of the exchange of ratifications of this treaty in the territories over which Spain relinquishes or cedes her sovereignty shall be determined according to the following rules:

1. Judgments rendered either in civil suits between private individuals, or in criminal matters, before the date mentioned, and with respect to which there is no recourse or right of review under the Spanish law, shall be deemed to be final, and shall be executed in due form by competent authority in the territory within which such judgments should be carried out.

2. Civil suits between private individuals which may on the date mentioned be undetermined shall be prosecuted to judgment before the court in which they may then be pending or in the court that may be substituted therefor.

3. Criminal actions pending on the date mentioned before the Supreme Court of Spain against citizens of the territory which by this treaty ceases to be Spanish shall continue under its jurisdiction until final judgment; but, such judgment having been rendered, the execution thereof shall be committed to the competent authority of the place in which the case arose.

ARTICLE XIII.

The rights of property secured by copyrights and patents acquired by Spaniards in the Island of Cuba, and in Porto Rico, the Philippines and other ceded territories, at the time of the exchange of the ratifications of this treaty, shall continue to be respected. Spanish scientific, literary and artistic works, not

subversive of public order in the territories in question, shall continue to be admitted free of duty into such territories, for the period of ten years, to be reckoned from the date of the exchange of the ratifications of this treaty.

Article XIV.

Spain shall have the power to establish consular officers in the ports and places of the territories, the sovereignty over which has been either relinquished or ceded by the present treaty.

Article XV.

The Government of each country will, for the term of ten years, accord to the merchant vessels of the other country the same treatment in respect of all port charges, including entrance and clearance dues, light dues, and tonnage duties, as it accords to its own merchant vessels, not engaged in the coastwise trade.

This article may at any time be terminated on six months' notice given by either Government to the other.

Article XVI.

It is understood that any obligations assumed in this treaty by the United States with respect to Cuba are limited to the time of its occupancy thereof; but it will upon the termination of such occupancy, advise any Government established in the island to assume the same obligations.

* * * * * * * *[1]

[1] Signed in duplicate, in Spanish and English. The English text is signed: "William R. Day, Cushman K. Davis, Wm. P. Frye, Geo. Gray Whitelaw Reid." The Spanish text is signed: "Eugenio Montero Ríos, B. de Abarzuza, J. de Garnica, W R de Villa Urrutia, Rafael Cerero." — Ed.

No. 188. Gold Standard Act

March 14, 1900

A BILL embodying the recommendations of the Indianapolis Monetary Commission was introduced in the House, January 6, 1898, by Jesse Overstreet of Indiana, and referred to the Committee on Banking and Currency, but was not reported. A bill with the same title as that of the act below was introduced by Overstreet December 4, 1899, taken up under special order on the 11th, and considered until the 18th, when it passed the House, which had not yet completed its organization by the appointment of committees, by a vote of 190 to 150, 14 not voting. A substitute for the House bill, reported by the Senate Committee on Finance the next day, passed the Senate with amendments February 15, 1900, by a vote of 46 to 29, 11 not voting. The bill was given its final form by a conference committee, the report of the committee being agreed to by the Senate, March 6, by a vote of 44 to 26, 17 not voting, and by the House, March 13, by a vote of 166 to 120, 10 answering "present," and 54 not voting. On the 14th the act was approved. A coinage system for the Philippine Islands was established by an act of March 2, 1903.

REFERENCES. — *Text* in *U. S. Stat. at Large*, XXXI., 45–50. For the debates see the *Cong. Record*, 56th Cong., 1st Sess. The text of the conference report, with a statement of the House conferees, is in the *Record* for March 7. See also the *Report of the Indianapolis Monetary Commission* (1898); Dewey, *Financial History of the U. S.* (3d ed., 1907), 468–473; Hepburn, *History of Coinage and Currency*, chap. 18.

An Act To define and fix the standard of value, to maintain the parity of all forms of money issued or coined by the United States, to refund the public debt, and for other purposes.

Be it enacted . . . , That the dollar consisting of twenty-five and eight-tenths grains of gold nine-tenths fine, as established by section thirty-five hundred and eleven of the Revised Statutes of the United States, shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard, and it shall be the duty of the Secretary of the Treasury to maintain such parity.

SEC. 2. That United States notes, and Treasury notes issued under the Act of . . . [July 14, 1890] . . . , when presented to the Treasury for redemption, shall be redeemed in gold coin of the standard fixed in the first section of this Act, and in order to secure the prompt and certain redemption of

such notes as herein provided it shall be the duty of the Secretary of the Treasury to set apart in the Treasury a reserve fund of one hundred and fifty million dollars in gold coin and bullion, which fund shall be used for such redemption purposes only, and whenever and as often as any of said notes shall be redeemed from said fund it shall be the duty of the Secretary of the Treasury to use said notes so redeemed to restore and maintain such reserve fund in the manner following, to wit: First, by exchanging the notes so redeemed for any gold coin in the general fund of the Treasury; second, by accepting deposits of gold coin at the Treasury or at any subtreasury in exchange for the United States notes so redeemed; third, by procuring gold coin by the use of said notes, in accordance with the provisions of section thirty-seven hundred of the Revised Statutes of the United States. If the Secretary of the Treasury is unable to restore and maintain the gold coin in the reserve fund by the foregoing methods, and the amount of such gold coin and bullion in said fund shall at any time fall below one hundred million dollars, then it shall be his duty to restore the same to the maximum sum of one hundred and fifty million dollars by borrowing money on the credit of the United States, and for the debt thus incurred to issue and sell coupon or registered bonds of the United States, in such form as he may prescribe, in denominations of fifty dollars or any multiple thereof, bearing interest at the rate of not exceeding three per centum per annum, payable quarterly, such bonds to be payable at the pleasure of the United States after one year from the date of their issue, and to be payable, principal and interest, in gold coin of the present standard value, and to be exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority; and the gold coin received from the sale of said bonds shall first be covered into the general fund of the Treasury and then exchanged, in the manner hereinbefore provided, for an equal amount of the notes redeemed and held for exchange, and the Secretary of the Treasury may, in his discretion, use said notes in exchange for gold, or to purchase or redeem any bonds of the United States, or for any other lawful purpose the public interests may require, except that they shall

not be used to meet deficiencies in the current revenues. That United States notes when redeemed in accordance with the provisions of this section shall be reissued, but shall be held in the reserve fund until exchanged for gold, as herein provided; and the gold coin and bullion in the reserve fund, together with the redeemed notes held for use as provided in this section, shall at no time exceed the maximum sum of one hundred and fifty million dollars.

SEC. 3. That nothing contained in this Act shall be construed to affect the legal-tender quality as now provided by law of the silver dollar, or of any other money coined or issued by the United States.

SEC. 4. [Divisions of issue and redemption to be established in the Treasury Department.]

SEC. 5. That it shall be the duty of the Secretary of the Treasury, as fast as standard silver dollars are coined under the provisions of the Acts of . . . [July 14, 1890, and June 13, 1898] . . . , from bullion purchased under the Act of . . . [July 14, 1890] . . . , to retire and cancel an equal amount of Treasury notes whenever received into the Treasury, either by exchange in accordance with the provisions of this Act or in the ordinary course of business, and upon the cancellation of Treasury notes silver certificates shall be issued against the silver dollars so coined.

SEC. 6. That the Secretary of the Treasury is hereby authorized and directed to receive deposits of gold coin with the Treasurer or any assistant treasurer of the United States in sums of not less than twenty dollars, and to issue gold certificates therefor in denominations of not less than twenty dollars, and the coin so deposited shall be retained in the Treasury and held for the payment of such certificates on demand, and used for no other purpose. Such certificates shall be receivable for customs, taxes, and all public dues, and when so received may be reissued, and when held by any national banking association may be counted as a part of its lawful reserve: *Provided*,[1] That whenever and so long as the gold coin held in the reserve fund in the Treasury for the redemption of United States

[1] Amended by acts of May 26, 1906 (*U. S. Stat. at Large*, XXXIV., Part 1, 202), and March 4, 1907 (*ibid.*, XXXIV., Part 1, 1289, 1290). — ED.

notes and Treasury notes shall fall and remain below one hundred million dollars the authority to issue certificates as herein provided shall be suspended: *And provided further*, That whenever and so long as the aggregate amount of United States notes and silver certificates in the general fund of the Treasury shall exceed sixty million dollars the Secretary of the Treasury may, in his discretion, suspend the issue of the certificates herein provided for: *And provided further*, That of the amount of such outstanding certificates one-fourth at least shall be in denominations of fifty dollars or less: *And provided further*, That the Secretary of the Treasury may, in his discretion, issue such certificates in denominations of ten thousand dollars, payable to order. [Sec. 5193 of Revised Statutes repealed.]

Sec. 7. That hereafter silver certificates shall be issued only of denominations of ten dollars and under, except that not exceeding in the aggregate ten per centum of the total volume of said certificates, in the discretion of the Secretary of the Treasury, may be issued in denominations of twenty dollars, fifty dollars, and one hundred dollars; and silver certificates of higher denomination than ten dollars, except as herein provided, shall, whenever received at the Treasury or redeemed, be retired and canceled, and certificates of denominations of ten dollars or less shall be substituted therefor, and after such substitution, in whole or in part, a like volume of United States notes of less denomination than ten dollars shall from time to time be retired and canceled, and notes of denominations of ten dollars and upward shall be reissued in substitution therefor, with like qualities and restrictions as those retired and canceled.[1]

Sec. 8. That the Secretary of the Treasury is hereby authorized to use, at his discretion, any silver bullion in the Treasury of the United States purchased under the Act of . . . [July 14, 1890] . . . , for coinage into such denominations of subsidiary silver coin as may be necessary to meet the public requirements for such coin: *Provided*, That the amount of subsidiary silver coin outstanding shall not at any time exceed in the aggregate one hundred millions of dollars. Whenever any silver bullion purchased under the Act of . . . [July 14, 1890] . . . , shall be used in the coinage of subsidiary silver coin, an amount of

[1] Amended by act of March 4, 1907 (*U. S. Stat. at Large*, XXXIV., 1289).—Ed.

Treasury notes issued under said Act equal to the cost of the bullion contained in such coin shall be canceled and not reissued.

SEC. 9. [Uncurrent subsidiary silver coin to be recoined.]

* * * * * * * *

SEC. 11. That the Secretary of the Treasury is hereby authorized to receive at the Treasury any of the outstanding bonds of the United States bearing interest at five per centum per annum, payable . . . [February 1, 1904] . . . , and any bonds of the United States bearing interest at four per centum per annum, payable . . . [July 1, 1907] . . . , and any bonds of the United States bearing interest at three per centum per annum, payable . . . [August 1, 1908] . . . , and to issue in exchange therefor an equal amount of coupon or registered bonds of the United States in such form as he may prescribe, in denominations of fifty dollars or any multiple thereof, bearing interest at the rate of two per centum per annum, payable quarterly, such bonds to be payable at the pleasure of the United States after thirty years from the date of their issue, and said bonds to be payable, principal and interest, in gold coin of the present standard value, and to be exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority: *Provided*, That such outstanding bonds may be received in exchange at a valuation not greater than their present worth to yield an income of two and one-quarter per centum per annum; and in consideration of the reduction of interest effected, the Secretary of the Treasury is authorized to pay to the holders of the outstanding bonds surrendered for exchange, out of any money in the Treasury not otherwise appropriated, a sum not greater than the difference between their present worth, computed as aforesaid, and their par value . . . .

* * * * * * * *

SEC. 14. That the provisions of this Act are not intended to preclude the accomplishment of international bimetallism whenever conditions shall make it expedient and practicable to secure the same by concurrent action of the leading commercial nations of the world and at a ratio which shall insure permanence of relative value between gold and silver.

Approved, March 14, 1900.

No. 189. Treaty with Great Britain regarding an Isthmian Canal

November 18, 1901

By the Clayton-Bulwer treaty of 1850 the United States and Great Britain agreed upon a joint control and neutralization of any isthmian canal that might thereafter be constructed. The apparent prospect of the construction of a canal at Panama by a French company led to an increasing demand in the United States for the abrogation of the treaty, and for the control of the canal by the United States alone. The Hay-Pauncefote treaty of February 5, 1900, authorized the construction of a canal either by the United States or by a private corporation, but retained the provision for neutralization. Amendments made by the Senate, declaring the Clayton-Bulwer treaty superseded and authorizing defensive measures by the United States in the management of the canal, were rejected by Great Britain, and the treaty failed. The Hay-Pauncefote treaty of November 18, 1901, in form a compromise between the original draft of 1900 and the Senate amendments, was ratified by President Roosevelt December 26, and by Great Britain January 20, 1902, and on February 22 was proclaimed. See *post*, Nos. 191 and 192.

References. — *Text* in *U. S. Stat. at Large*, XXXII., Part 2, 1903–1905. The treaty of 1900, with other documents, is in *Senate Document* 85, 57th Cong., 1st Sess. (reprinted in *Foreign Relations*, 1901, pp. 237–246). The comparative merits of the Nicaragua and Panama routes were exhaustively treated by Senator Morgan, of Alabama, in *Senate Report* 1337, 56th Cong., 1st Sess. See also the report of the Walker commission, November 30, 1900 (*Senate Doc.* 5, 56th Cong., 2d Sess.). For the diplomatic history of the canal question see Moore, *Digest of International Law*, III., 2–222.

Article I.

The High Contracting Parties agree that the present Treaty shall supersede the afore-mentioned Convention [the Clayton-Bulwer treaty] of the 19th April, 1850.

Article II.

It is agreed that the canal may be constructed under the auspices of the Government of the United States, either directly at its own cost, or by gift or loan of money to individuals or Corporations, or through subscription to or purchase of stock or shares, and that, subject to the provisions of the present

Treaty, the said Government shall have and enjoy all the rights incident to such construction, as well as the exclusive right of providing for the regulation and management of the canal.

Article III.

The United States adopts, as the basis of the neutralization of such ship canal, the following Rules, substantially as embodied in the Convention of Constantinople, signed the 28th October, 1888, for the free navigation of the Suez Canal, that is to say:

1. The canal shall be free and open to the vessels of commerce and of war of all nations observing these Rules, on terms of entire equality, so that there shall be no discrimination against any such nation, or its citizens or subjects, in respect of the conditions or charges of traffic, or otherwise. Such conditions and charges of traffic shall be just and equitable.

2. The canal shall never be blockaded, nor shall any right of war be exercised nor any act of hostility be committed within it. The United States, however, shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder.

3. Vessels of war of a belligerent shall not revictual nor take any stores in the canal except so far as may be strictly necessary; and the transit of such vessels through the canal shall be effected with the least possible delay in accordance with the Regulations in force, and with only such intermission as may result from the necessities of the service.

Prizes shall be in all respects subject to the same Rules as vessels of war of the belligerents.

4. No belligerent shall embark or disembark troops, munitions of war, or warlike materials in the canal, except in case of accidental hindrance of the transit, and in such case the transit shall be resumed with all possible dispatch.

5. The provisions of this Article shall apply to waters adjacent to the canal, within 3 marine miles of either end. Vessels of war of a belligerent shall not remain in such waters longer than twenty-four hours at any one time, except in case of distress, and in such case, shall depart as soon as possible; but a vessel of war of one belligerent shall not depart within twenty-

four hours from the departure of a vessel of war of the other belligerent.

6. The plant, establishments, buildings, and all works necessary to the construction, maintenance, and operation of the canal shall be deemed to be part thereof, for the purposes of this Treaty, and in time of war, as in time of peace, shall enjoy complete immunity from attack or injury by belligerents. and from acts calculated to impair their usefulness as part of the canal.

ARTICLE IV.

It is agreed that no change of territorial sovereignty or of the international relations of the country or countries traversed by the before-mentioned canal shall affect the general principle of neutralization or the obligation of the High Contracting Parties under the present Treaty.

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No. 190. Chinese Exclusion Act

April 29, 1902

A BILL to prohibit the coming of Chinese and persons of Chinese descent into the United States, and to regulate the residence of Chinese therein, was introduced in the House, January 18, 1902, by Julius Kahn of California, and referred to the Committee on Foreign Affairs. The immediate occasion of the bill was the approaching expiration, by limitation, of the "Geary act" of 1892. A substitute bill, reported by James B. Perkins of New York, March 26, was followed, April 1, by another substitute bill and a minority report filed by Champ Clark of Missouri. The substitute bill of the committee was taken up April 4, and on the 7th passed the House, with amendments, without a division. The Senate Committee on Immigration reported the bill without amendment, but on April 17 a bill on the same subject, introduced January 16 by John H. Mitchell of Oregon, and passed by the Senate April 16, was substituted for the House bill and the bill was passed. Two conference committees were necessary before the bill received its final form. The report of the second conference committee was accepted by both houses April 28, and the next day the act was approved.

REFERENCES. — *Text* in *U. S. Stat. at Large*, XXXII., Part I, 176, 177. For the debates see the *Cong. Record*, 57th Cong., 1st Sess.; a summary

[1] Signed: "John Hay, Pauncefote." — ED.

statement of the differences between the reports of the first and second conference committees is in *ibid.*, p. 4709. The Perkins report is *House Report* 1231. On the Mitchell substitute, said to embody the views of Pacific Coast senators and representatives, see *Senate Report* 776. The most important work on the general subject is Coolidge, *Chinese Immigration* (1909).

An Act To prohibit the coming into and to regulate the residence within the United States, its Territories, and all territory under its jurisdiction, and the District of Columbia, of Chinese and persons of Chinese descent.

Be it enacted . . . , That all laws now in force prohibiting and regulating the coming of Chinese persons, and persons of Chinese descent, into the United States, and the residence of such persons therein . . . . be, and the same are hereby, re-enacted, extended, and continued so far as the same are not inconsistent with treaty obligations, until otherwise provided by law, and said laws shall also apply to the island territory under the jurisdiction of the United States, and prohibit the immigration of Chinese laborers, not citizens of the United States, from such island territory to the mainland territory of the United States, whether in such island territory at the time of cession or not, and from one portion of the island territory of the United States to another portion of said island territory: *Provided, however*, That said laws shall not apply to the transit of Chinese laborers from one island to another island of the same group; and any islands within the jurisdiction of any State or the District of Alaska shall be considered a part of the mainland under this section.

Sec. 2. That the Secretary of the Treasury is hereby authorized and empowered to make and prescribe, and from time to time to change, such rules and regulations not inconsistent with the laws of the land as he may deem necessary and proper to execute the provisions of this Act and of the Acts hereby extended and continued and of the treaty of . . . [December 8, 1894,] . . . between the United States and China, and with the approval of the President to appoint such agents as he may deem necessary for the efficient execution of said treaty and said Acts.

Sec. 3. That nothing in the provisions of this Act or any other Act shall be construed to prevent, hinder, or restrict any foreign exhibitor, representative, or citizen of any foreign

nation, or the holder, who is a citizen of any foreign nation, of any concession or privilege from any fair or exposition authorized by Act of Congress from bringing into the United States, under contract, such mechanics, artisans, agents, or other employees, natives of their respective foreign countries, as they or any of them may deem necessary for the purpose of making preparation for installing or conducting their exhibits or of preparing for installing or conducting any business authorized or permitted under or by virtue of or pertaining to any concession or privilege which may have been or may be granted by any said fair or exposition in connection with such exposition, under such rules and regulations as the Secretary of the Treasury may prescribe, both as to the admission and return of such person or persons.

SEC. 4. That it shall be the duty of every Chinese laborer, other than a citizen, rightfully in, and entitled to remain in any of the insular territory of the United States (Hawaii excepted) at the time of the passage of this Act, to obtain within one year thereafter a certificate of residence in the insular territory wherein he resides, which certificate shall entitle him to residence therein, and upon failure to obtain such certificate as herein provided he shall be deported from such insular territory; and the Philippine Commission is authorized and required to make all regulations and provisions necessary for the enforcement of this section in the Philippine Islands, including the form and substance of the certificate of residence so that the same shall clearly and sufficiently identify the holder thereof and enable officials to prevent fraud in the transfer of the same . . .

Approved, April 29, 1902.

No. 191. Act for the Construction of an Isthmian Canal

June 28, 1902

A BILL for the construction of an isthmian canal was introduced in the House, December 6, 1901, by William P. Hepburn of Iowa, and referred to the Committee on Interstate and Foreign Commerce. On the 19th

the bill was reported with amendments, and on January 7, 1902, passed by a vote of 308 to 2, 1 answering "present", and 44 not voting. The Senate Committee on Interoceanic Canal reported the bill, March 13, 1902, without amendment. The bill was taken up in the Senate April 17, and June 19 passed with amendments by a vote of 67 to 6, 15 not voting. The House accepted the Senate amendments, and June 28 the act was approved. An act of June 29, 1906, authorized the construction of a lock canal across the Isthmus of Panama, "of the general type proposed by the minority of the Board of Consulting Engineers" created by order of President Roosevelt, January 24, 1905.

REFERENCES. — *Text* in *U. S. Stat. at Large*, XXXII., Part I, 481–484. For the debates see the *Cong. Record*, 57th Cong., 1st Sess. *Senate Report* 1 is a comprehensive history of the canal question. The Hepburn report of December 19 is *House Report* 15; the Morgan report of March 13 is *Senate Report* 783. The Senate hearings on the House bill form *Senate Doc.* 253. *Senate Report* 1337 and *Senate Doc.* 5, 56th Cong., 2d Sess., are also valuable. On the general subject see W. F. Johnson, *Four Centuries of the Canal* (1906).

An Act To provide for the construction of a canal connecting the waters of the Atlantic and Pacific oceans.

Be it enacted, . . . That the President of the United States is hereby authorized to acquire, for and on behalf of the United States, at a cost not exceeding forty millions of dollars, the rights, privileges, franchises, concessions, grants of land, right of way, unfinished work, plants, and other property, real, personal, and mixed, of every name and nature, owned by the New Panama Canal Company, of France, on the Isthmus of Panama, and all its maps, plans, drawings, records on the Isthmus of Panama and in Paris, including all the capital stock, not less, however, than sixty-eight thousand eight hundred and sixty-three shares of the Panama Railroad Company, owned by or held for the use of said canal company, provided a satisfactory title to all of said property can be obtained.

SEC. 2. That the President is hereby authorized to acquire from the Republic of Colombia, for and on behalf of the United States, upon such terms as he may deem reasonable, perpetual control of a strip of land, the territory of the Republic of Colombia, not less than six miles in width, extending from the Caribbean Sea to the Pacific Ocean, and the right to use and dispose of the waters thereon, and to excavate, construct, and to perpetually maintain, operate, and protect thereon a canal, of such depth and capacity as will afford convenient passage of ships

of the greatest tonnage and draft now in use, from the Caribbean Sea to the Pacific Ocean, which control shall include the right to perpetually maintain and operate the Panama Railroad, if the ownership thereof, or a controlling interest therein, shall have been acquired by the United States, and also jurisdiction over said strip and the ports at the ends thereof to make such police and sanitary rules and regulations as shall be necessary to preserve order and preserve the public health thereon, and to establish such judicial tribunals as may be agreed upon thereon as may be necessary to enforce such rules and regulations.

The President may acquire such additional territory and rights from Colombia as in his judgment will facilitate the general purpose hereof.

SEC. 3. That when the President shall have arranged to secure a satisfactory title to the property of the New Panama Canal Company, as provided in section one hereof, and shall have obtained by treaty control of the necessary territory from the Republic of Colombia, as provided in section two hereof, he is authorized to pay for the property of the New Panama Canal Company forty millions of dollars and to the Republic of Colombia such sum as shall have been agreed upon . . .

The President shall then through the Isthmian Canal Commission hereinafter authorized cause to be excavated, constructed, and completed, utilizing to that end as far as practicable the work heretofore done by the New Panama Canal Company, of France, and its predecessor company, a ship canal from the Caribbean Sea to the Pacific Ocean. Such canal shall be of sufficient capacity and depth as shall afford convenient passage for vessels of the largest tonnage and greatest draft now in use, and such as may be reasonably anticipated, and shall be supplied with all necessary locks and other appliances to meet the necessities of vessels passing through the same from ocean to ocean; and he shall also cause to be constructed such safe and commodious harbors at the termini of said canal, and make such provisions for defense as may be necessary for the safety and protection of said canal and harbors. . . .

SEC. 4. That should the President be unable to obtain for the United States a satisfactory title to the property of the

New Panama Canal Company and the control of the necessary territory of the Republic of Colombia and the rights mentioned in sections one and two of this Act, within a reasonable time and upon reasonable terms, then the President, having first obtained for the United States perpetual control by treaty of the necessary territory from Costa Rica and Nicaragua, upon terms which he may consider reasonable, for the construction, perpetual maintenance, operation, and protection of a canal connecting the Caribbean Sea with the Pacific Ocean by what is commonly known as the Nicaragua route, shall through the said Isthmian Canal Commission cause to be excavated and constructed a ship canal and waterway from a point on the shore of the Caribbean Sea near Greytown, by way of Lake Nicaragua, to a point near Brito on the Pacific Ocean . . .

* * * * * * * *

In the excavation and construction of said canal the San Juan River and Lake Nicaragua, or such parts of each as may be made available, shall be used.

SEC. 5. That the sum of ten million dollars is hereby appropriated, out of any money in the Treasury not otherwise appropriated, toward the project herein contemplated by either route so selected.

And the President is hereby authorized to cause to be entered into such contract or contracts as may be deemed necessary for the proper excavation, construction, completion, and defense of said canal, harbors, and defenses, by the route finally determined upon under the provisions of this Act. Appropriations therefor shall from time to time be hereafter made, not to exceed in the aggregate the additional sum of one hundred and thirty-five millions of dollars should the Panama route be adopted, or one hundred and eighty millions of dollars should the Nicaragua route be adopted.

SEC. 6. That in any agreement with the Republic of Colombia, or with the States of Nicaragua and Costa Rica, the President is authorized to guarantee to said Republic or to said States the use of said canal and harbors, upon such terms as may be agreed upon, for all vessels owned by said States or by citizens thereof.

SEC. 7. That to enable the President to construct the canal

and works appurtenant thereto as provided in this Act, there is hereby created the Isthmian Canal Commission, the same to be composed of seven members, who shall be nominated and appointed by the President, by and with the advice and consent of the Senate, and who shall serve until the completion of said canal unless sooner removed by the President. . . . Of the seven members of said Commission at least four of them shall be persons learned and skilled in the science of engineering, and of the four at least one shall be an officer of the United States Army, and at least one other shall be an officer of the United States Navy, the said officers respectively being either upon the active or the retired list of the Army or of the Navy. . . . In addition to the members of said Isthmian Canal Commission, the President is hereby authorized through said Commission to employ in said service any of the engineers of the United States Army at his discretion, and likewise to employ any engineers in civil life, at his discretion, and any other persons necessary for the proper and expeditious prosecution of said work. . . . Said Commission shall in all matters be subject to the direction and control of the President, and shall make to the President annually and at such other periods as may be required, either by law or by the order of the President, full and complete reports of all their actings and doings and of all moneys received and expended in the construction of said work and in the performance of their duties in connection therewith, which said reports shall be by the President transmitted to Congress. And the said Commission shall furthermore give to Congress, or either House of Congress, such information as may at any time be required either by Act of Congress or by the order of either House of Congress. . . .

[Sec. 8 authorizes a bond issue of $130,000,000 to defray expenses.]

Approved, June 28, 1902.

No. 192. Panama Canal Treaty

November 18, 1903

THE rejection by the Senate of the Colombian Congress, August 12, 1903, of the Hay-Herran convention of January 22 for the lease of a strip of territory six miles wide across the Isthmus of Panama was followed, in the first week of November, by a revolution at Colon, the recognition of the *de facto* government, and the reception by President Roosevelt of Bunau-Varilla, the minister of the new Republic of Panama. The treaty of November 18 was ratified by Panama December 2, and by President Roosevelt February 25, 1904, and the next day was proclaimed. An act of April 28 vested in the President powers of temporary government in the Canal Zone. An act of August 24, 1912, provided a permanent form of government and exempted American coastwise vessels from the payment of tolls; but by an act of June 15, 1914, tolls of not less than 75 cents nor more than $1.25 per registered ton were authorized, subject to the provisions of the treaty of November 18, 1903, with Panama, and without waiver of the rights of the United States, under the treaty of November 18, 1901, with Great Britain (No. 189) or the treaty of 1903, with Panama, to discriminate in favor of its own citizens in the matter of tolls, or respecting its sovereignty over or control of the canal.

REFERENCES. — *Text* in *U. S. Stat. at Large*, XXXIII., Part I, 2234–2241. On the course of the United States in the acquisition of the Canal Zone see Latané, *America as a World Power*, ch. 12, and references there cited.

ARTICLE I.

The United States guarantees and will maintain the independence of the Republic of Panama.

ARTICLE II.

The Republic of Panama grants to the United States in perpetuity the use, occupation and control of a zone of land and land under water for the construction, maintenance, operation, sanitation and protection of said Canal of the width of ten miles extending to the distance of five miles on each side of the center line of the route of the Canal to be constructed; the said zone beginning in the Caribbean Sea three marine miles from mean low water mark and extending to and across the Isthmus of Panama into the Pacific ocean to a distance of three marine miles from mean low water mark with the proviso

that the cities of Panama and Colon and the harbors adjacent to said cities, which are included within the boundaries of the zone above described, shall not be included within this grant.[1] The Republic of Panama further grants to the United States in perpetuity the use, occupation and control of any other lands and waters outside of the zone above described which may be necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said Canal or of any auxiliary canals or other works necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said enterprise.

The Republic of Panama further grants in like manner to the United States in perpetuity all islands within the limits of the zone above described and in addition thereto the group of small islands in the Bay of Panama, named Perico, Naos, Culebra and Flamenco.

Article III.

The Republic of Panama grants to the United States all the rights, power and authority within the zone mentioned and described in Article II of this agreement and within the limits of all auxiliary lands and waters mentioned and described in said Article II which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority.

Article IV.

As rights subsidiary to the above grants the Republic of Panama grants in perpetuity to the United States the right to use the rivers, streams, lakes and other bodies of water within its limits for navigation, the supply of water or water-power or other purposes, so far as the use of said rivers, streams, lakes and bodies of water and the waters thereof may be necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said Canal.

[1] A treaty with Panama defining the boundary of the Canal Zone was concluded September 2, 1814 (*U. S. Stat. at Large*, XXXVIII., Part 2, 1893–1907).

ARTICLE V.

The Republic of Panama grants to the United States in perpetuity a monopoly for the construction, maintenance and operation of any system of communication by means of canal or railroad across its territory between the Caribbean Sea and the Pacific ocean.

ARTICLE VI.

[Existing private rights not invalidated. Damages to be appraised by a joint commission, and awards to be paid by the United States.]

ARTICLE VII.

The Republic of Panama grants to the United States within the limits of the cities of Panama and Colon and their adjacent harbors and within the territory adjacent thereto the right to acquire by purchase or by the exercise of the right of eminent domain, any lands, buildings, water rights or other properties necessary and convenient for the construction, maintenance, operation and protection of the Canal and of any works of sanitation, such as the collection and disposition of sewage and the distribution of water in the said cities of Panama and Colon, which, in the discretion of the United States may be necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said Canal and railroad. All such works of sanitation, collection and disposition of sewage and distribution of water in the cities of Panama and Colon shall be made at the expense of the United States, and the Government of the United States, its agents or nominees shall be authorized to impose and collect water rates and sewerage rates which shall be sufficient to provide for the payment of interest and the amortization of the principal of the cost of said works within a period of fifty years and upon the expiration of said term of fifty years the system of sewers and water works shall revert to and become the properties of the cities of Panama and Colon respectively, and the use of the water shall be free to the inhabitants of Panama and Colon, except to the extent

that water rates may be necessary for the operation and maintenance of said system of sewers and water.

The Republic of Panama agrees that the cities of Panama and Colon shall comply in perpetuity with the sanitary ordinances whether of a preventive or curative character prescribed by the United States and in case the Government of Panama is unable or fails in its duty to enforce this compliance by the cities of Panama and Colon with the sanitary ordinances of the United States the Republic of Panama grants to the United States the right and authority to enforce the same.

The same right and authority are granted to the United States for the maintenance of public order in the cities of Panama and Colon and the territories and harbors adjacent thereto in case the Republic of Panama should not be, in the judgment of the United States, able to maintain such order.

Article VIII.

The Republic of Panama grants to the United States all rights which it now has or hereafter may acquire to the property of the New Panama Canal Company and the Panama Railroad Company as a result of the transfer of sovereignty from the Republic of Colombia to the Republic of Panama over the Isthmus of Panama and authorizes the New Panama Canal Company to sell and transfer to the United States its rights, privileges, properties and concessions as well as the Panama Railroad and all the shares or part of the shares of that company; but the public lands situated outside of the zone described in Article II of this treaty now included in the concessions to both said enterprises and not required in the construction or operation of the Canal shall revert to the Republic of Panama except any property now owned by or in the possession of said companies within Panama or Colon or the ports or terminals thereof.

Article IX.

The United States agrees that the ports at either entrance of the Canal and the waters thereof, and the Republic of Panama agrees that the towns of Panama and Colon shall be free for

all time so that there shall not be imposed or collected custom house tolls, tonnage, anchorage, lighthouse, wharf, pilot, or quarantine dues or any other charges or taxes of any kind upon any vessel using or passing through the Canal or belonging to or employed by the United States, directly or indirectly, in connection with the construction, maintenance, operation, sanitation and protection of the main Canal, or auxiliary works, or upon the cargo, officers, crew, or passengers of any such vessels, except such tolls and charges as may be imposed by the United States for the use of the Canal and other works, and except tolls and charges imposed by the Republic of Panama upon merchandise destined to be introduced for the consumption of the rest of the Republic of Panama, and upon vessels touching at the ports of Colon and Panama and which do not cross the Canal. . .

Article X.

The Republic of Panama agrees that there shall not be imposed any taxes, national, municipal, departmental, or of any other class, upon the Canal, the railways and auxiliary works, tugs and other vessels employed in the service of the Canal, store houses, work shops, offices, quarters for laborers, factories of all kinds, warehouses, wharves, machinery and other works, property, and effects appertaining to the Canal or railroad and auxiliary works, or their officers or employees, situated within the cities of Panama and Colon, and that there shall not be imposed contributions or charges of a personal character of any kind upon officers, employees, laborers, and other individuals in the service of the Canal and railroad and auxiliary works.

Article XI.

The United States agrees that the official dispatches of the Government of the Republic of Panama shall be transmitted over any telegraph and telephone lines established for canal purposes and used for public and private business at rates not higher than those required from officials in the service of the United States.

Article XII.

The Government of the Republic of Panama shall permit the immigration and free access to the lands and workshops of the Canal and its auxiliary works of all employees and workmen of whatever nationality under contract to work upon or seeking employment upon or in any wise connected with the said Canal and its auxiliary works, with their respective families, and all such persons shall be free and exempt from the military service of the Republic of Panama.

Article XIII.

The United States may import at any time into the said zone and auxiliary lands, free of custom duties, imposts, taxes, or other charges, and without any restrictions, any and all vessels, dredges, engines, cars, machinery, tools, explosives, materials, supplies, and other articles necessary and convenient in the construction, maintenance, operation, sanitation and protection of the Canal and auxiliary works, and all provisions, medicines, clothing, supplies and other things necessary and convenient for the officers, employees, workmen and laborers in the service and employ of the United States and for their families.

Article XIV.

As the price or compensation for the rights, powers and privileges granted in this convention by the Republic of Panama to the United States, the Government of the United States agrees to pay to the Republic of Panama the sum of ten million dollars ($10,000,000) in gold coin of the United States on the exchange of the ratification of this convention and also an annual payment during the life of this convention of two hundred and fifty thousand dollars ($250,000) in like gold coin, beginning nine years after the date aforesaid.

The provisions of this Article shall be in addition to all other benefits assured to the Republic of Panama under this convention. . . .

* * * * * * * *

ARTICLE XVI.

The two Governments shall make adequate provision by future agreement for the pursuit, capture, imprisonment, detention and delivery within said zone and auxiliary lands to the authorities of the Republic of Panama of persons charged with the commitment of crimes, felonies or misdemeanors without said zone and for the pursuit, capture, imprisonment, detention and delivery without said zone to the authorities of the United States of persons charged with the commitment of crimes, felonies and misdemeanors within said zone and auxiliary lands.

* * * * * * * *

ARTICLE XVIII.

The Canal, when constructed, and the entrances thereto shall be neutral in perpetuity, and shall be opened upon the terms provided for by Section 1 of Article three of, and in conformity with all the stipulations of, the treaty entered into by the Governments of the United States and Great Britain on November 18, 1901.

ARTICLE XIX.

The Government of the Republic of Panama shall have the right to transport over the Canal its vessels and its troops and munitions of war in such vessels at all times without paying charges of any kind. The exemption is to be extended to the auxiliary railway for the transportation of persons in the service of the Republic of Panama, or of the police force charged with the preservation of public order outside of said zone, as well as to their baggage, munitions of war and supplies.

ARTICLE XX.

If by virtue of any existing treaty in relation to the territory of the Isthmus of Panama, whereof the obligations shall descend or be assumed by the Republic of Panama, there may be any privilege or concession in favor of the Government or the citizens and subjects of a third power relative to an interoceanic means of communication which in any of its terms may be

incompatible with the terms of the present convention, the Republic of Panama agrees to cancel or modify such treaty in due form . . . .

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ARTICLE XXII.

[Rights in prior concessions to be transferred to the United States.]

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No. 193. Naturalization Act

June 29, 1906

UNTIL the passage of the act of 1906, naturalization was in the main regulated by an act of 1802. The report of a Commission on Naturalization appointed by President Roosevelt March 1, 1905, transmitted to Congress December 5, was followed by the introduction of a number of bills relating to the subject in both houses. A bill with the same title as that of the act below, introduced in the House, February 22, 1906, by Benjamin F. Howell of New Jersey, passed with amendments, without division, June 5. An amended form of the bill passed the Senate without division June 27. The House disagreed to the Senate amendments, and the final form of the bill was given by a conference committee. Only the most important substantive provisions of the act are given here.

REFERENCES. — *Text* in *U. S. Stat. at Large*, XXXIV., Part 1, 596–607. For the debates see the *Cong. Record*, 59th Cong., 1st Sess. See also *House Report* 1789, *Senate Report* 4373, and the *Report of the Commission on Naturalization*.

An Act To establish a Bureau of Immigration and Naturalization, and to provide for a uniform rule for the naturalization of aliens throughout the United States.

Be it enacted . . . , That the designation of the Bureau of Immigration in the Department of Commerce and Labor is hereby changed to the "Bureau of Immigration and Naturalization," which said Bureau, under the direction and control of the Secretary of Commerce and Labor, in addition to the duties now provided by law, shall have charge of all matters concerning the naturalization of aliens. . . .

* * * * * * * *

SEC. 3. That exclusive jurisdiction to naturalize aliens as citizens of the United States is hereby conferred upon the following specified courts:

United States circuit and district courts now existing, or which may hereafter be established by Congress in any State, United States district courts for the Territories of Arizona, New Mexico, Oklahoma, Hawaii, and Alaska, the supreme court of the District of Columbia, and the United States courts for the Indian Territory; also all courts of record in any State or Territory now existing, or which may hereafter be created, having a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited. . . .

SEC. 4. That an alien may be admitted to become a citizen of the United States in the following manner and not otherwise:

First. He shall declare on oath before the clerk of any court authorized by this Act to naturalize aliens, or his authorized deputy, in the district in which such alien resides, two years at least prior to his admission, and after he has reached the age of eighteen years, that it is bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly, by name, to the prince, potentate, state, or sovereignty of which the alien may be at the time a citizen or subject. . . .

Second. Not less than two years nor more than seven years after he has made such declaration of intention he shall make and file, in duplicate, a petition in writing, signed by the applicant in his own hand-writing and duly verified, in which petition such applicant shall state his full name, his place of residence (by street and number, if possible), his occupation, and, if possible, the date and place of his birth; the place from which he emigrated, and the date and place of his arrival in the United States, and, if he entered through a port, the name of the vessel on which he arrived; the time when and the place and name of the court where he declared his intention to become a citizen of the United States; if he is married he shall state the name of his wife and, if possible, the country of her nativity and her place of residence at the time of filing his petition; and if he

has children, the name, date, and place of birth and place of residence of each child living at the time of the filing of his petition . . . .

The petition shall set forth that he is not a disbeliever in or opposed to organized government, or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government, a polygamist or believer in the practice of polygamy, and that it is his intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he at the time of filing of his petition may be a citizen or subject, and that it is his intention to reside permanently within the United States, and whether or not he has been denied admission as a citizen of the United States, and, if denied, the ground or grounds of such denial, the court or courts in which such decision was rendered, and that the cause for such denial has since been cured or removed, and every fact material to his naturalization and required to be proved upon the final hearing of his application.

The petition shall also be verified by the affidavits of at least two credible witnesses, who are citizens of the United States, and who shall state in their affidavits that they have personally known the applicant to be a resident of the United States for a period of at least five years continuously, and of the State, Territory, or district in which the application is made for a period of at least one year immediately preceding the date of the filing of his petition, and that they each have personal knowledge that the petitioner is a person of good moral character, and that he is in every way qualified, in their opinion, to be admitted as a citizen of the United States. . . .

Third. He shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; that he will support and defend the

Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same.

Fourth. It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the State or Territory where such court is at the time held one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States, as to the facts of residence, moral character, and attachment to the principles of the Constitution shall be required, and the name, place of residence, and occupation of each witness shall be set forth in the record.

Fifth. In case the alien applying to be admitted to citizenship has borne any hereditary title, or has been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court.

Sixth. When any alien who has declared his intention to become a citizen of the United States dies before he is actually naturalized the widow and minor children of such alien may, by complying with the other provisions of this Act, be naturalized without making any declaration of intention.

Sec. 5. [Public notice of petition, etc., to be given.]

Sec. 6. That petitions for naturalization may be made and filed during term time or vacation of the court and shall be docketed the same day as filed, but final action thereon shall be had only on stated days, to be fixed by rule of the court, and in no case shall final action be had upon a petition until at least ninety days have elapsed after filing and posting the notice of such petition: *Provided*, That no person shall be naturalized nor shall any certificate of naturalization be issued by any court within thirty days preceding the holding of any general election within its territorial jurisdiction. . . .

SEC. 7. That no person who disbelieves in or who is opposed to organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States, or of any other organized government, because of his or their official character, or who is a polygamist, shall be naturalized or be made a citizen of the United States.

SEC. 8. That no alien shall hereafter be naturalized or admitted as a citizen of the United States who can not speak the English language: *Provided*, That this requirement shall not apply to aliens who are physically unable to comply therewith, if they are otherwise qualified to become citizens of the United States: *And provided further*, That the requirements of this section shall not apply to any alien who has prior to the passage of this Act declared his intention to become a citizen of the United States in conformity with the law in force at the date of making such declaration: *Provided further*, That the requirements of section eight shall not apply to aliens who shall hereafter declare their intention to become citizens and who shall make homestead entries upon the public lands of the United States and comply in all respects with the laws providing for homestead entries on such lands.

* * * * * * * *

SEC. 15. . . . If any alien who shall have secured a certificate of citizenship under the provisions of this Act shall, within five years after the issuance of such certificate, return to the country of his nativity, or go to any other foreign country, and take permanent residence therein, it shall be considered prima facie evidence of a lack of intention on the part of such alien to become a permanent citizen of the United States at the time of filing his application for citizenship, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the cancellation of his certificate of citizenship as fraudulent, and the diplomatic and consular officers of the United States in foreign countries shall from time to time, through the Department of State, furnish the Depart-

ment of Justice with the names of those within their respective jurisdictions who have such certificates of citizenship and who have taken permanent residence in the country of their nativity, or in any other foreign country, and such statements, duly certified, shall be admissible in evidence in all courts in proceedings to cancel certificates of citizenship. . . .

* * * * * * * *

SEC. 23. That any person who knowingly procures naturalization in violation of the provisions of this Act shall be fined not more than five thousand dollars, or shall be imprisoned not more than five years, or both, and upon conviction the court in which such conviction is had shall thereupon adjudge and declare the final order admitting such person to citizenship void. Jurisdiction is hereby conferred on the courts having jurisdiction of the trial of such offense to make such adjudication. Any person who knowingly aids, advises, or encourages any person not entitled thereto to apply for or to secure naturalization, or to file the preliminary papers declaring an intent to become a citizen of the United States, or who in any naturalization proceeding knowingly procures or gives false testimony as to any material fact, or who knowingly makes an affidavit false as to any material fact required to be proved in such proceeding, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

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Approved, June 29, 1906.

No. 194. Prohibition of Campaign Contributions by Corporations

January 26, 1907

A BILL to prohibit money contributions by corporations in connection with political elections, said to be identical with a bill introduced in 1901 by William E. Chandler of New Hampshire but not acted upon, was introduced in the Senate, February 19, 1906, by Benjamin R. Tillman of South Carolina, and on June 9 passed without a division. In the House the bill was referred to the Committee on Election of President and Vice-President

and Representatives in Congress, but no further action was taken during the session. January 15, 1907, in the second session, the bill was reported with amendments, and on the 21st passed without a division under suspension of the rules. The Senate concurred in the House amendments, and on the 26th the act was approved. An act of June 25, 1910 (amended August 19, 1911, and August 23, 1912), provided for publicity of political contributions in Congressional elections.

REFERENCES. — *Text* in *U. S. Stat. at Large*, XXXIV., Part I, 864, 865. The debate was unimportant. See *Senate Report* 3056, 59th Cong., 1st Sess., and *House Report* 6397, 59th Cong., 2d Sess.

An Act To prohibit corporations from making money contributions in connection with political elections.

Be it enacted . . . , That it shall be unlawful for any national bank, or any corporation organized by authority of any laws of Congress, to make a money contribution in connection with any election to any political office. It shall also be unlawful for any corporation whatever to make a money contribution in connection with any election at which Presidential and Vice-Presidential electors or a Representative in Congress is to be voted for or any election by any State legislature of a United States Senator. Every corporation which shall make any contribution in violation of the foregoing provisions shall be subject to a fine not exceeding five thousand dollars, and every officer or director of any corporation who shall consent to any contribution by the corporation in violation of the foregoing provisions shall upon conviction be punished by a fine of not exceeding one thousand and not less than two hundred and fifty dollars, or by imprisonment for a term of not more than one year, or both such fine and imprisonment in the discretion of the court.

Approved, January 26, 1907.

No. 195. Immigration Act

February 20, 1907

A COMPREHENSIVE act to regulate immigration was passed March 3, 1903, and an amendatory act March 22, 1904. A bill further to regulate

the immigration of aliens, introduced in the Senate, February 14, 1906, by William P. Dillingham of Vermont, was reported with amendments March 29, and May 23 passed without a division. On the 29th the bill was reported with amendments in the House, and June 5 was recommitted. It was reported back on the 11th, and on the 25th passed without a division. The Senate disagreed to the House amendments, and the bill went to a conference committee. No further action was taken during the session. At the next session, February 13, 1907, the report of the conference committee was submitted, and was accepted by the Senate on the 16th and by the House on the 19th. The next day the act was approved. Only the most important substantive provisions of the act are given here.

REFERENCES. — *Text* in *U. S. Stat. at Large*, XXXIV., Part I, 898–911. For the debates see the *Cong. Record*, 59th Cong., 1st and 2d Sess. See also *Senate Report* 2186 and *House Reports* 4558 and 4912, 59th Cong., 2d Sess.

An Act To regulate the immigration of aliens into the United States.

Be it enacted . . . , That there shall be levied, collected, and paid a tax of four dollars for every alien entering the United States. The said tax shall be paid to the collector of customs of the port or customs district to which said alien shall come, or, if there be no collector at such port or district, then to the collector nearest thereto, by the master, agent, owner, or consignee of the vessel, transportation line, or other conveyance or vehicle bringing such alien to the United States. The money thus collected, together with all fines and rentals collected under the laws regulating the immigration of aliens into the United States, shall be paid into the Treasury of the United States, and shall constitute a permanent appropriation to be called the "immigrant fund," to be used under the direction of the Secretary of Commerce and Labor to defray the expense of regulating the immigration of aliens into the United States under said laws, including the contract labor laws, the cost of reports of decisions of the Federal courts, and digest thereof, for the use of the Commissioner-General of Immigration, and the salaries and expenses of all officers, clerks, and employees appointed to enforce said laws. The tax imposed by this section shall be a lien upon the vessel, or other vehicle of carriage or transportation bringing such aliens to the United States, and shall be a debt in favor of the United States against the owner or owners of such vessel, or other vehicle, and the payment of

such tax may be enforced by any legal or equitable remedy. That the said tax shall not be levied upon aliens who shall enter the United States after an uninterrupted residence of at least one year, immediately preceding such entrance, in the Dominion of Canada, Newfoundland, the Republic of Cuba, or the Republic of Mexico, nor upon otherwise admissible residents of any possession of the United States, nor upon aliens in transit through the United States, nor upon aliens who have been lawfully admitted to the United States and who later shall go in transit from one part of the United States to another through foreign contiguous territory: . . . . *Provided further*, That the provisions of this section shall not apply to aliens arriving in Guam, Porto Rico, or Hawaii; but if any such alien, not having become a citizen of the United States, shall later arrive at any port or place of the United States on the North American Continent the provisions of this section shall apply: *Provided further*, That whenever the President shall be satisfied that passports issued by any foreign government to its citizens to go to any country other than the United States or to any insular possession of the United States or to the Canal Zone are being used for the purpose of enabling the holders to come to the continental territory of the United States to the detriment of labor conditions therein, the President may refuse to permit such citizens of the country issuing such passports to enter the continental territory of the United States from such other country or from such insular possessions or from the Canal Zone.

SEC. 2. That the following classes of aliens shall be excluded from admission into the United States: All idiots, imbeciles, feeble-minded persons, epileptics, insane persons, and persons who have been insane within five years previous; persons who have had two or more attacks of insanity at any time previously; paupers; persons likely to become a public charge; professional beggars; persons afflicted with tuberculosis or with a loathsome or dangerous contagious disease; persons not comprehended within any of the foregoing excluded classes who are found to be and are certified by the examining surgeon as being mentally or physically defective, such mental or physical defect being of a nature which may affect the ability of such

alien to earn a living; persons who have been convicted of or admit having committed a felony or other crime or misdemeanor involving moral turpitude; polygamists, or persons who admit their belief in the practice of polygamy, anarchists, or persons who believe in or advocate the overthrow by force or violence of the Government of the United States, or of all government, or of all forms of law, or the assassination of public officials; [persons coming for immoral purposes;] persons hereinafter called contract laborers, who have been induced or solicited to migrate to this country by offers or promises of employment or in consequence of agreements, oral, written or printed, express or implied, to perform labor in this country of any kind, skilled or unskilled; those who have been, within one year from the date of application for admission to the United States, deported as having been induced or solicited to migrate as above described; any person whose ticket or passage is paid for with the money of another, or who is assisted by others to come, unless it is affirmatively and satisfactorily shown that such person does not belong to one of the foregoing excluded classes, and that said ticket or passage was not paid for by any corporation, association, society, municipality, or foreign government, either directly or indirectly; all children under sixteen years of age, unaccompanied by one or both of their parents, at the discretion of the Secretary of Commerce and Labor or under such regulations as he may from time to time prescribe: *Provided*, That nothing in this Act shall exclude, if otherwise admissible, persons convicted of an offense purely political, not involving moral turpitude: *Provided further*, That the provisions of this section relating to the payments for tickets or passage by any corporation, association, society, municipality, or foreign government shall not apply to the tickets or passage of aliens in immediate and continuous transit through the United States to foreign contiguous territory: *And provided further*, That skilled labor may be imported if labor of like kind unemployed can not be found in this country: *And provided further*, That the provisions of this law applicable to contract labor shall not be held to exclude professional actors, artists, lecturers, singers, ministers of any religious denomination, professors for colleges or seminaries, persons belonging to any recognized

learned profession, or persons employed strictly as personal or domestic servants.

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SEC. 6. That it shall be unlawful . . . to assist or encourage the importation or migration of any alien by promise of employment through advertisements printed and published in any foreign country; and any alien coming to this country in consequence of such an advertisement shall be treated as coming under promise or agreement as contemplated in section two of this Act . . . : *Provided*, That this section shall not apply to State or Territories, the District of Columbia, or places subject to the jurisdiction of the United States advertising the inducements they offer for immigration thereto, respectively.

SEC. 7. That no transportation company or owner or owners of vessels, or others engaged in transporting aliens into the United States, shall, directly or indirectly, either by writing, printing, or oral representation, solicit, invite, or encourage the immigration of any aliens into the United States, but this shall not be held to prevent transportation companies from issuing letters, circulars, or advertisements, stating the sailings of their vessels and terms and facilities of transportation therein . . . .

SEC. 8. That any person, including the master, agent, owner, or consignee of any vessel, who shall bring into or land in the United States, by vessel or otherwise, or who shall attempt by himself or through another, to bring into or land in the United States, by vessel or otherwise, any alien not duly admitted by an immigrant inspector or not lawfully entitled to enter the United States shall be deemed guilty of a misdemeanor, and shall, on conviction, be punished by a fine not exceeding one thousand dollars, or by imprisonment for a term not exceeding two years, or by both such fine and imprisonment for each and every alien so landed or brought in or attempted to be landed or brought in.

SEC. 9. That it shall be unlawful for any person, including any transportation company other than railway lines entering the United States from foreign contiguous territory, or the owner, master, agent, or consignee of any vessel to bring to

the United States any alien subject to any of the following disabilities: Idiots, imbeciles, epileptics, or persons afflicted with tuberculosis or with a loathsome or dangerous contagious disease . . . .

SEC. 10. That the decision of the board of special inquiry, hereinafter provided for, based upon the certificate of the examining medical officer, shall be final as to the rejection of aliens affected with tuberculosis or with a loathsome or dangerous contagious disease, or with any mental or physical disability which would bring such aliens within any of the classes excluded from admission to the United States under section two of this Act.

SEC. 11. That upon the certificate of a medical officer of the United States Public Health and Marine Hospital Service to the effect that a rejected alien is helpless from sickness, mental or physical disability, or infancy, if such alien is accompanied by another alien whose protection or guardianship is required by such rejected alien, such accompanying alien may also be excluded, and the master, agent, owner, or consignee of the vessel in which such alien and accompanying alien are brought shall be required to return said alien and accompanying alien in the same manner as vessels are required to return other rejected aliens.

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SEC. 19. That all aliens brought to this country in violation of law shall, if practicable, be immediately sent back to the country whence they respectively came on the vessels bringing them. The cost of their maintenance while on land, as well as the expense of the return of such aliens, shall be borne by the owner or owners of the vessels on which they respectively came; and if any master, person in charge, agent, owner, or consignee of any such vessel shall refuse to receive back on board thereof, or on board of any other vessel owned or operated by the same interests, such aliens, or shall fail to detain them thereon, or shall refuse or fail to return them to the foreign port from which they came, or to pay the cost of their maintenance while on land, or shall make any charge for the return of any such alien, or shall take any security from him for the payment of such charge, such master, person in charge, agent,

owner, or consignee shall be deemed guilty of a misdemeanor and shall, on conviction, be punished by a fine of not less than three hundred dollars for each and every such offense; and no vessel shall have clearance from any port of the United States while any such fine is unpaid: *Provided*, That the Commissioner-General of Immigration, with the approval of the Secretary of Commerce and Labor, may suspend, upon conditions to be prescribed by the Commissioner-General of Immigration, the deportation of any alien found to have come in violation of any provision of this Act, if, in his judgment, the testimony of such alien is necessary on behalf of the United States Government in the prosecution of offenders against any provision of this Act: *Provided*, That the cost of maintenance of any person so detained resulting from such suspension of deportation shall be paid from the "immigrant fund" but no alien certified, as provided in section seventeen of this Act, to be suffering from tuberculosis or from a loathsome or dangerous contagious disease other than one of quarantinable nature shall be permitted to land for medical treatment thereof in any hospital in the United States, unless with the express permission of the Secretary of Commerce and Labor: *Provided*, That upon the certificate of a medical officer of the United States Public Health and Marine-Hospital Service to the effect that the health or safety of an insane alien would be unduly imperiled by immediate deportation, such alien may, at the expense of the "immigrant fund," be held for treatment until such time as such alien may, in the opinion of such medical officer, be safely deported.

SEC. 20. That any alien who shall enter the United States in violation of law, and such as become public charges from causes existing prior to landing, shall, upon the warrant of the Secretary of Commerce and Labor, be taken into custody and deported to the country whence he came at any time within three years after the date of his entry into the United States. Such deportation, including one-half of the entire cost of removal to the port of deportation, shall be at the expense of the contractor, procurer, or other person by whom the alien was unlawfully induced to enter the United States, or, if that can not be done, then the cost of removal to the port of deportation shall be at the expense of the "immigrant fund" provided for

in section one of this Act, and the deportation from such port shall be at the expense of the owner or owners of such vessel or transportation line by which such aliens respectively came . . .

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SEC. 21. That in case the Secretary of Commerce and Labor shall be satisfied that an alien has been found in the United States in violation of this Act, or that an alien is subject to deportation under the provisions of this Act or of any law of the United States, he shall cause such alien within the period of three years after landing or entry therein to be taken into custody and returned to the country whence he came, as provided by section twenty of this Act, and a failure or refusal on the part of the masters, agents, owners, or consignees of vessels to comply with the order of the Secretary of Commerce and Labor to take on board, guard safely, and return to the country whence he came any alien ordered to be deported under the provisions of this Act shall be punished by the imposition of the penalties prescribed in section nineteen of this Act: *Provided*, That when in the opinion of the Secretary of Commerce and Labor the mental or physical condition of such alien is such as to require personal care and attendance, he may employ a suitable person for that purpose, who shall accompany such alien to his or her final destination, and the expense incident to such service shall be defrayed in like manner.

SEC. 22. That the Commissioner-General of Immigration, in addition to such other duties as may by law be assigned to him, shall, under the direction of the Secretary of Commerce and Labor, have charge of the administration of all laws relating to the immigration of aliens into the United States, and shall have the control, direction, and supervision of all officers, clerks, and employees appointed thereunder. . . .

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SEC. 29. That the circuit and district courts of the United States are hereby invested with full and concurrent jurisdiction of all causes, civil and criminal, arising under any of the provisions of this Act.

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SEC. 37. That whenever an alien shall have taken up his permanent residence in this country, and shall have filed his

declaration of intention to become a citizen, and thereafter shall send for his wife, or minor children to join him, if said wife or any of said children shall be found to be affected with any contagious disorder, such wife or children shall be held, under such regulations as the Secretary of Commerce and Labor shall prescribe, until it shall be determined whether the disorder will be easily curable, or whether they can be permitted to land without danger to other persons; and they shall not be either admitted or deported until such facts have been ascertained; and if it shall be determined that the disorder is easily curable or that they can be permitted to land without danger to other persons, they shall, if otherwise admissible, thereupon be admitted.

SEC. 38. That no person who disbelieves in or who is opposed to all organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to all organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized government, because of his or their official character, shall be permitted to enter the United States or any territory or place subject to the jurisdiction thereof. . . .

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SEC. 41. That nothing in this Act shall be construed to apply to accredited officials of foreign governments nor to their suites, families, or guests.

Approved, February 20, 1907.

No. 196. Act relating to Expatriation

March 2, 1907

IN pursuance of a Senate resolution of April 13, 1906, and of a report submitted to the House of Representatives June 6, the Secretary of State, Elihu Root, appointed James B. Scott, David Jayne Hill and Gaillard Hunt

a board "to inquire into the laws and practice regarding citizenship, expatriation, and protection abroad, and to report recommendations for legislation." The submission of the report of the board, which was laid before Congress December 18, was followed, January 14, 1907, by the introduction in the House, by James B. Perkins of New York, of a bill relating to expatriation, which passed on the 21st without a division. On the 27th an amended bill passed the Senate without a division. The House accepted the Senate amendments, and March 2 the act was approved.

REFERENCES. — *Text* in *U. S. Stat. at Large*, XXXIV., Part 1, 1228, 1229. The debate was unimportant. The report of the board is *House Doc.* 326, 59th Cong., 2d Sess.

An Act In reference to the expatriation of citizens and their protection abroad.

Be it enacted . . . , That the Secretary of State shall be authorized, in his discretion, to issue passports to persons not citizens of the United States as follows: Where any person has made a declaration of intention to become such a citizen as provided by law and has resided in the United States for three years a passport may be issued to him entitling him to the protection of the Government in any foreign country: *Provided*, That such passport shall not be valid for more than six months and shall not be renewed, and that such passport shall not entitle the holder to the protection of this Government in the country of which he was a citizen prior to making such declaration of intention.

SEC. 2. That any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state.

When any naturalized citizen shall have resided for two years in the foreign state from which he came, or for five years in any other foreign state it shall be presumed that he has ceased to be an American citizen, and the place of his general abode shall be deemed his place of residence during said years: *Provided, however*, That such presumption may be overcome on the presentation of satisfactory evidence to a diplomatic or consular officer of the United States, under such rules and regulations as the Department of State may prescribe: *And provided also*, That no American citizen shall be allowed to expatriate himself when this country is at war.

SEC. 3. That any American woman who marries a foreigner shall take the nationality of her husband. At the termination of the marital relation she may resume her American citizenship, if abroad, by registering as an American citizen within one year with a consul of the United States, or by returning to reside in the United States, or, if residing in the United States at the termination of the marital relation, by continuing to reside therein.

SEC. 4. That any foreign woman who acquires American citizenship by marriage to an American shall be assumed to retain the same after the termination of the marital relation if she continue to reside in the United States, unless she makes formal renunciation thereof before a court having jurisdiction to naturalize aliens, or if she resides abroad she may retain her citizenship by registering as such before a United States consul within one year after the termination of such marital relation.

SEC. 5. That a child born without the United States of alien parents shall be deemed a citizen of the United States by virtue of the naturalization of or resumption of American citizenship by the parent: *Provided*, That such naturalization or resumption takes place during the minority of such child: *And provided further*, That the citizenship of such minor child shall begin at the time such minor child begins to reside permanently in the United States.

SEC. 6. That all children born outside the limits of the United States who are citizens thereof in accordance with the provisions of section nineteen hundred and ninety-three of the Revised Statutes of the United States and who continue to reside outside the United States shall, in order to receive the protection of this Government, be required upon reaching the age of eighteen years to record at an American consulate their intention to become residents and remain citizens of the United States and shall be further required to take the oath of allegiance to the United States upon attaining their majority.

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Approved, March 2, 1907.

No. 197. Sixteenth Amendment

February 25, 1913

A joint resolution proposing an amendment to the Constitution regarding taxes on incomes, reported in the Senate, June 28, 1909, by Nelson W. Aldrich of Rhode Island, from the Committee on Finance, passed the Senate, July 5, by a vote of 77 to 0, 15 not voting. An unsuccessful attempt was made to amend the resolution by adding to it provisions substantially identical with those of the Seventeenth Amendment (No. 198). The resolution passed the House, July 12, by a vote of 318 to 14, 1 answering "present", 55 not voting. The amendment was ratified by all the States except Connecticut, Florida, Pennsylvania, Rhode Island, Utah and Virginia. A proclamation of February 25, 1913, declared the amendment in force.

REFERENCES. — *Text* in *U. S. Stat. at Large*, XXXVII., Part 2, 1785. For the debates see the *Cong. Record*, 61st Cong., 1st Sess. The important debate was in the House.

ARTICLE XVI.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

No. 198. Seventeenth Amendment

May 31, 1913

A JOINT resolution proposing an amendment to the Constitution providing for the popular election of Senators was reported, January 11, 1911, by William E. Borah of Idaho from the Senate Committee on Judiciary, to which the matter had been referred, and debated at length until February 28, when it failed to pass, less than two-thirds voting for it. In the 62d Congress numerous resolutions relating to the subject appeared in both houses. A joint resolution identical with that of January 11 was presented in the House, April 5, 1911, by William W. Rucker of Missouri, and on the 13th passed with amendments by a vote of 296 to 16, 77 not voting. An amended form, reported by Senator Borah May 1, passed the Senate, June 12, by a vote of 64 to 24, 2 not voting. The House disagreed to the Senate amendments, and the resolution went to a conference committee, where it remained until the close of the session. April 17, 1912, in the second session, Senator

Clarence D. Clark of Wyoming reported that the conference committee were unable to agree; but on the 23d the House yielded, and May 14 the resolution was signed by the Speaker and the Vice-President. The amendment was ratified by all the States except Alabama, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Rhode Island, South Carolina, Utah and Virginia. A proclamation of May 31 declared the amendment in force. An act of June 4, 1914, to expire three years from its date, made temporary provision for the election of senators under the new system.

REFERENCES. — *Text* in *U. S. Stat. at Large*, XXXVIII., Part 2, 2049. For the debates see the *Cong. Record*, 61st and 62d Congresses. See also *House Report* 2, 62d Cong., 1st Sess.; the Sutherland minority report of May 22, 1911, is *Senate Report* 35 (also in the *Record*, 1428, 1429).

ARTICLE XVII

1. The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

2. When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointment until the people fill the vacancies by election as the legislature may direct.

3. This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

No. 199. Federal Reserve Act

December 23, 1913

A BILL to establish a Federal reserve banking system, introduced in the House on June 26, 1913, by Representative Glass of Virginia, was followed on August 29 by another bill on the same subject, differing in many details from the first, which was referred to the Committee on Banking and Currency. An amended bill, reported on September 9, passed the House on the 18th by a vote of 286 to 85. The bill was not taken up in the Senate until November 22, when it was reported without recommendation, and on December 19 passed with amendments. The report of a conference committee, submitted on December 22, was accepted by the House the same day by a vote of 298 to 60, and the next day by the Senate, the vote in the latter house being 43 to 25. The act has been many times amended.

REFERENCES. — *Text* in *U. S. Stat. at Large*, XXXVIII, Part I, 251–275. For the debates see the *Cong. Record*, 63d Cong., 1st and 2d Sess. The House report of September 9, with elaborate tables and the views of the minority, is *House Report* 69, 63d Cong., 1st Sess. The Senate report of November 22 is *Senate Report* 133, 63d Cong., 1st Sess.; the conference report is *House Report* 163, 63d Cong., 2d Sess. The monthly bulletins of the Board are of special value. See also H. P. Willis, *The Federal Reserve System;* W. P. G. Harding, *The Formative Period of the Federal Reserve System.*

An Act To provide for the establishment of Federal reserve banks, to furnish an elastic currency, to afford means of rediscounting commercial paper, to establish a more effective supervision of banking in the United States, and for other purposes.

SEC. 2. As soon as practicable, the Secretary of the Treasury, the Secretary of Agriculture and the Comptroller of the Currency, acting as "The Reserve Bank Organization Committee," shall designate not less than eight nor more than twelve cities to be known as Federal reserve cities, and shall divide the continental United States, excluding Alaska, into districts, each district to contain only one of such Federal reserve cities. . . . *Provided*, That the districts shall be apportioned with due regard to the convenience and customary course of business and shall not necessarily be coterminous with any State or States. . . . Such districts shall be known as Federal reserve districts and may be designated by number. . . .

Said organization committee . . . shall supervise the or-

ganization in each of the cities designated of a Federal reserve bank, which shall include in its title the name of the city in which it is situated, as "Federal Reserve Bank of Chicago."

Under regulations to be prescribed by the organization committee, every national banking association in the United States is hereby required, and every eligible bank in the United States and every trust company within the District of Columbia, is hereby authorized to signify in writing, within sixty days after the passage of this Act, its acceptance of the terms and provisions hereof. When the organization committee shall have designated the cities in which Federal reserve banks are to be organized, and fixed the geographical limits of the Federal reserve districts, every national banking association within that district shall be required within thirty days after notice from the organization committee, to subscribe to the capital stock of such Federal reserve bank in a sum equal to six per centum of the paid-up capital stock and surplus of such bank. . . .

Any national bank failing to signify its acceptance of the terms of this Act within the sixty days aforesaid, shall cease to act as a reserve agent, upon thirty days' notice, to be given within the discretion of the said organization committee or of the Federal Reserve Board.

Should any national banking association in the United States now organized fail within one year after the passage of this Act to become a member bank or fail to comply with any of the provisions of this Act applicable thereto, all of the rights, privileges, and franchises of such association granted to it under the national-bank Act, or under the provision of this Act, shall be thereby forfeited. . . .

No individual, copartnership, or corporation other than a member bank of its district shall be permitted to subscribe for or to hold at any time more than $25,000 par value of stock in any Federal reserve bank. Such stock shall be known as public stock and may be transferred on the books of the Federal reserve bank by the chairman of the board of directors of such bank. . . .

SEC. 3. Each Federal reserve bank shall establish branch banks within the Federal reserve district in which it is located

and may do so in the district of any Federal reserve bank which may have been suspended.

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SEC. 5. The capital stock of each Federal reserve bank shall be divided into shares of $100 each. . . .

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SEC. 7. After all necessary expenses of a Federal reserve bank have been paid or provided for, the stockholders shall be entitled to receive an annual dividend of six per centum on the paid-in capital stock, which dividend shall be cumulative. After the aforesaid dividend claims have been fully met, all the net earnings shall be paid to the United States as a franchise tax, except that one-half of such net earnings shall be paid into a surplus fund until it shall amount to forty per centum of the paid-in capital stock of such bank.

The net earnings derived by the United States from Federal reserve banks shall, in the discretion of the Secretary, be used to supplement the gold reserve held against outstanding United States notes, or shall be applied to the reduction of the outstanding bonded indebtedness of the United States under regulations to be prescribed by the Secretary of the Treasury. . . .

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SEC. 9. Any bank incorporated by special law of any State, or organized under the general laws of any State or of the United States, may make application to the reserve bank organization committee, pending organization, and thereafter to the Federal Reserve Board for the right to subscribe to the stock of the Federal reserve bank organized or to be organized within the Federal reserve district where the applicant is located. . . .

SEC. 10. A Federal Reserve Board is hereby created which shall consist of seven members, including the Secretary of the Treasury and the Comptroller of the Currency, who shall be members ex officio, and five members appointed by the President of the United States, by and with the advice and consent of the Senate. In selecting the five appointive members of the Federal Reserve Board, not more than one of whom shall be selected from any one Federal reserve district, the President shall have due regard to a fair representation of the different commercial, industrial and geographical divisions of the country. The five

members of the Federal Reserve Board appointed by the President and confirmed as aforesaid shall devote their entire time to the business of the Federal Reserve Board. . . .

The members of said board, the Secretary of the Treasury, the Assistant Secretaries of the Treasury, and the Comptroller of the Currency shall be ineligible during the time they are in office and for two years thereafter to hold any office, position, or employment in any member bank. Of the five members thus appointed by the President at least two shall be persons experienced in banking or finance. One shall be designated by the President to serve for two, one for four, one for six, one for eight, and one for ten years, and thereafter each member so appointed shall serve for a term of ten years unless sooner removed for cause by the President. Of the five persons thus appointed, one shall be designated by the President as governor and one as vice governor of the Federal Reserve Board. The governor of the Federal Reserve Board, subject to its supervision, shall be the active executive officer. . . .

SEC. 11. The Federal Reserve Board shall be authorized and empowered:

(a) To examine at its discretion the accounts, books and affairs of each Federal reserve bank and of each member bank and to require such statements and reports as it may deem necessary. The said board shall publish once each week a statement showing the condition of each Federal reserve bank and a consolidated statement for all Federal reserve banks. . . .

(b) To permit, or, on the affirmative vote of at least five members of the Reserve Board to require Federal reserve banks to rediscount the discounted paper of other Federal reserve banks at rates of interest to be fixed by the Federal Reserve Board.

(c) To suspend for a period not exceeding thirty days, and from time to time to renew such suspension for periods not exceeding fifteen days, any reserve requirement specified in this Act. . . .

(e) To add to the number of cities classified as reserve and central reserve cities under existing law in which national banking associations are subject to the reserve requirements set forth in section twenty of this Act; or to reclassify existing

reserve and central reserve cities or to terminate their designation as such. . . .

(j) To exercise general supervision over said Federal reserve banks.

(k) To grant by special permit to national banks applying therefor, when not in contravention of State or local law, the right to act as trustee, executor, administrator, or registrar of stocks and bonds under such rules and regulations as the said board may prescribe. . . .

SEC. 12. There is hereby created a Federal Advisory Council, which shall consist of as many members as there are Federal reserve districts. Each Federal reserve bank by its board of directors shall annually select from its own Federal reserve district one member of said council. . . . The meetings of said advisory council shall be held at Washington . . . at least four times each year, and oftener if called by the Federal Reserve Board. . . .

The Federal Advisory Council shall have power, by itself or through its officers, (1) to confer directly with the Federal Reserve Board on general business conditions; (2) to make oral or written representations concerning matters within the jurisdiction of said board; (3) to call for information and to make recommendations in regard to discount rates, rediscount business, note issues, reserve conditions in the various districts, the purchase and sale of gold or securities by reserve banks, open-market operations by said banks, and the general affairs of the reserve banking system.

SEC. 13. Any Federal reserve bank may receive from any of its member banks, and from the United States, deposits of current funds in lawful money, national-bank notes, Federal reserve notes, or checks and drafts upon solvent member banks, payable upon presentation; or, solely for exchange purposes, may receive from other Federal reserve banks deposits of current funds in lawful money, national-bank notes, or checks and drafts upon solvent member or other Federal reserve banks, payable upon presentation.

Upon the indorsement of any of its member banks, with a waiver of demand, notice and protest by such bank, any Federal reserve bank may discount notes, drafts, and bills of exchange

arising out of actual commercial transactions; that is, notes, drafts, and bills of exchange issued or drawn for agricultural, industrial, or commercial purposes, or the proceeds of which have been used, or are to be used, for such purposes, the Federal Reserve Board to have the right to determine or define the character of the paper thus eligible for discount, within the meaning of this Act. . . .

Any Federal reserve bank may discount acceptances which are based on the importation or exportation of goods and which have a maturity at time of discount of not more than three months, and indorsed by at least one member bank. The amount of acceptances so discounted shall at no time exceed one-half the paid-up capital stock and surplus of the bank for which the rediscounts are made.

The aggregate of such notes and bills bearing the signature or indorsement of any one person, company, firm, or corporation rediscounted for any one bank shall at no time exceed ten per centum of the unimpaired capital and surplus of said bank; but this restriction shall not apply to the discount of bills of exchange drawn in good faith against actually existing values. . . .

SEC. 14. Any Federal reserve bank may, under rules and regulations prescribed by the Federal Reserve Board, purchase and sell in the open market, at home or abroad, either from or to domestic or foreign banks, firms, corporations, or individuals, cable transfers and bankers' acceptances and bills of exchange of the kinds and maturities by this Act made eligible for rediscount, with or without the indorsement of a member bank.

Every Federal reserve bank shall have power:

(a) To deal in gold coin and bullion at home or abroad, to make loans thereon, exchange Federal reserve notes for gold, gold coin, or gold certificates, and to contract for loans of gold coin or bullion, giving therefor, when necessary, acceptable security, including the hypothecation of United States bonds or other securities which Federal reserve banks are authorized to hold;

(b) To buy and sell, at home or abroad, bonds and notes of the United States, and bills, notes, revenue bonds, and warrants with a maturity from date of purchase of not exceeding six months, issued in anticipation of the collection of taxes or in

anticipation of the receipt of assured revenues by any State, county, district, political subdivision, or municipality in the continental United States, including irrigation, drainage and reclamation districts. . . .

(c) To purchase from member banks and to sell, with or without its indorsement, bills of exchange arising out of commercial transactions, as hereinbefore defined;

(d) To establish from time to time, subject to review and determination of the Federal Reserve Board, rates of discount to be charged by the Federal reserve bank for each class of paper, which shall be fixed with a view of accommodating commerce and business;

(e) To establish accounts with other Federal reserve banks for exchange purposes and, with the consent of the Federal Reserve Board, to open and maintain banking accounts in foreign countries, appoint correspondents, and establish agencies in such countries wheresoever it may deem best for the purpose of purchasing, selling, and collecting bills of exchange, and to buy and sell with or without its indorsement, through such correspondents or agencies, bills of exchange arising out of actual commercial transactions which have not more than ninety days to run and which bear the signature of two or more responsible parties.

SEC. 15. The moneys held in the general fund of the Treasury, except the five per centum fund for the redemption of outstanding national-bank notes and the funds provided in this Act for the redemption of Federal reserve notes may, upon the direction of the Secretary of the Treasury, be deposited in Federal reserve banks, which banks, when required by the Secretary of the Treasury, shall act as fiscal agents of the United States; and the revenues of the Government or any part thereof may be deposited in such banks, and disbursements may be made by checks drawn against such deposits.

No public funds of the Philippine Islands, or of the postal savings, or any Government funds, shall be deposited in the continental United States in any bank not belonging to the system established by this Act. . . .

SEC. 16. Federal reserve notes, to be issued at the discretion of the Federal Reserve Board for the purpose of making advances

to Federal reserve banks through the Federal reserve agents as hereinafter set forth and for no other purpose, are hereby authorized. The said notes shall be obligations of the United States and shall be receivable by all national and member banks and Federal reserve banks and for all taxes, customs, and other public dues. They shall be redeemed in gold on demand at the Treasury Department of the United States, in the city of Washington . . ., or in gold or lawful money at any Federal reserve bank.

Any Federal reserve bank may make application to the local Federal reserve agent for such amount of the Federal reserve notes hereinbefore provided for as it may require. Such application shall be accompanied with a tender to the local Federal reserve agent of collateral in amount equal to the sum of the Federal reserve notes thus applied for and issued pursuant to such application. The collateral security thus offered shall be notes and bills, accepted for rediscount under the provisions of section thirteen of this Act. . . .

Every Federal reserve bank shall maintain reserves in gold or lawful money of not less than thirty-five per centum against its deposits and reserves in gold of not less than forty per centum against its Federal reserve notes in actual circulation, and not offset by gold or lawful money deposited with the Federal reserve agent. . . .

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SEC. 24. Any national banking association not situated in a central reserve city may make loans secured by improved and unencumbered farm land, situated within its Federal reserve district, but no such loan shall be made for a longer time than five years, nor for an amount exceeding fifty per centum of the actual value of the property offered as security. . . .

The Federal Reserve Board shall have power from time to time to add to the list of cities in which national banks shall not be permitted to make loans secured upon real estate in the manner described in this section.

SEC. 25. Any national banking association possessing a capital and surplus of $1,000,000 or more may file application with the Federal Reserve Board . . . for the purpose of securing authority to establish branches in foreign countries or depend-

encies of the United States for the furtherance of the foreign commerce of the United States, and to act, if required to do so, as fiscal agents of the United States. . . . The Federal Reserve Board shall have power to approve or to reject such application if, in its judgment, the amount of capital proposed to be set aside for the conduct of foreign business is inadequate, or if for other reasons the granting of such application is deemed inexpedient. . . .

Approved, December 23, 1913.

No. 200. Federal Trade Commission

September 26, 1914

A NUMBER of bills dealing with Federal trade regulation, in addition to the regulation already provided by the interstate commerce and trust laws, came before the 63d Congress. A bill to create an interstate commission, introduced on April 13, 1914, by Representative Covington of Maryland, was favorably reported from the Committee on Interstate and Foreign Commerce the next day, debated from May 19 to June 5, and on the latter date passed the House without a division. An amended bill, reported in the Senate on June 13, was taken up on the 25th, and on August 5 passed by a vote of 53 to 16. The report of a conference committee to which the bill was referred was accepted by the Senate on September 8 and by the House on September 10, and on the 26th the act was approved.

REFERENCES. — *Text in U. S. Stat. at Large*, XXXVIII, Part I, 717–724. For the debates see the *Cong. Record*, 63d Cong., 2d Sess. The report of April 14 is *House Report* 533; that of June 13 is *Senate Report* 597. The conference committee report (*House Report* 1142) shows the evolution of the text of the bill. The *Annual Report* and collected *Decisions* of the Commission are important; see also G. C. Henderson, *The Federal Trade Commission*.

An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes.

Be it enacted . . . , That a commission is hereby created and established, to be known as the Federal Trade Commission (hereinafter referred to as the commission), which shall be composed of five commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate.

Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from the date of the taking effect of this Act, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years. . . . The commission shall choose a chairman from its own membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

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SEC. 3. That upon the organization of the commission and election of its chairman, the Bureau of Corporations and the offices of Commissioner and Deputy Commissioner of Corporations shall cease to exist; and all pending investigations and proceedings of the Bureau of Corporations shall be continued by the commission. . . .

The principal office of the commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

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SEC. 5. That unfair methods of competition in commerce are hereby declared unlawful.

The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce.

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation

a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. . . .

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show

to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside. . . .

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or judgment of the court to enforce the same shall in any wise relieve or absolve any person, partnership, or corporation from any liability under the antitrust acts. . . .

SEC. 6. That the commission shall also have power —

(a) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the Act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

(b) To require, by general or special orders, corporations engaged in commerce, excepting banks, and common carriers

subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. . . .

(c) Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust Acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the commission.

(d) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts by any corporation.

(e) Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust Acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

(f) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

(g) From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this Act.

(h) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

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SEC. 8. That the several departments and bureaus of the Government when directed by the President shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this Act, and shall detail from time to time such officials and employees to the commission as he may direct.

SEC. 9. That for the purposes of this Act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpœna the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. . . .

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpœna the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. . . .

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpœna of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpœna

issued by it: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

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SEC. 11. Nothing contained in this Act shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust Acts or the Acts to regulate commerce, nor shall anything contained in the Act be construed to alter, modify, or repeal the said antitrust Acts or the Acts to regulate commerce or any part or parts thereof.

Approved, September 26, 1914.

No. 201. Clayton Anti-Trust Act

October 15, 1914

A BILL to supplement existing anti-trust laws, introduced in the House on April 14, 1914, by Representative Clayton of Alabama, was favorably reported with amendments on May 6 from the Committee on the Judiciary, and on June 5 passed the House, the vote being 277 to 54. On July 22 the bill with amendments was reported in the Senate, and passed that house on September 2 by a vote of 46 to 16. The final report of a conference committee was accepted by the Senate on October 5 by a vote of 35 to 24, and by the House on the 8th by a vote of 245 to 52. On the 15th the act was approved.

REFERENCES. — *Text* in *U. S. Stat. at Large*, XXXVIII, Part I, 730–740. The debates are in the *Cong. Record*, 63d Cong., 2d Sess. The report of May 6, in four parts, is *House Report* 627; that of July 22, containing the text of the bill as it passed the House, is *Senate Report* 698. The two conference reports of September 23 and 24 form *Senate Docs.* 583 and 585. See A. A. Young, "The Sherman Act and the New Anti-Trust Legislation," in *Jour. of Polit. Econ.*, March–May, 1915.

An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes.

SEC. 2. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof

or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

SEC. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

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SEC. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

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No. 202. Declaration of War against Germany

April 6, 1917

FEBRUARY 3, 1917, in a special address before the two houses of Congress, President Wilson reviewed the recent diplomatic correspondence between the United States and Germany in regard to submarine warfare, and announced that diplomatic relations with the Imperial German Government had been severed. On February 26 a request was made for authority to arm merchant vessels, but a bill to give effect to the request failed of passage in the few days that remained before the expiration of the 64th Congress. The 65th Congress met on April 2, and on the evening of that day President Wilson, again addressing the two houses, declared that "neutrality is no longer feasible or desirable," asserted that "the world must be made safe for democracy," and asked for a declaration of war. The joint resolution embodying the declaration was adopted by the Senate on April 4 by a vote of 82 to 6, and by the House in the early morning of April 6 by a vote of 373 to 50. A joint resolution of December 7, in identical terms, declared war against Austria-Hungary.

REFERENCES. — *Text* in *U. S. Stat. at Large*, XL, Part I, 1. The joint resolution of December 7 is in *ibid.*, 429. For proclamations of April 6, November 16 and December 8, announcing regulations concerning aliens, *ibid.*, Part II, 1650–1652, 1716–1718, 1728, 1729. The debates are in the *Cong. Record*, 65th Cong., 1st Sess. The diplomatic notes which preceded the declaration of war may be conveniently consulted in Albert Shaw, *Messages and Papers of Woodrow Wilson*, I.

Joint Resolution Declaring that a state of war exists between the Imperial German Government and the Government and the people of the United States and making provision to prosecute the same.

Whereas the Imperial German Government has committed repeated acts of war against the Government and the people of the United States of America: Therefore be it

Resolved . . . , That the state of war between the United States and the Imperial German Government which has thus been thrust upon the United States is hereby formally declared; and that the President be, and he is hereby, authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial German Government; and to bring the conflict to a successful termination all of the resources of the country are hereby pledged by the Congress of the United States.

Approved, April 6, 1917.

No. 203. Espionage Act

June 15, 1917

A BILL to punish espionage and enforce the criminal laws of the United States in certain cases, introduced in the House on April 2, 1917, by Representative Webb of North Carolina, was reported with amendments on April 25, and on May 4 passed the House by a vote of 260 to 107. The Senate, which had before it a bill of similar purport introduced by Culberson of Texas on April 3, passed the House bill on May 11, with amendments, by a vote of 77 to 6. The report of a conference committee, submitted May 29, was recommitted, but a second conference report was agreed to by the House on June 7 and by the Senate on June 12, and on June 15 the act was approved. Section 3 of the act was amended by an act of May 16, 1918.

REFERENCES. — *Text* in *U. S. Stat. at Large*, XL, Part I, 217–231. The amendatory act of May 16, 1918, is in *ibid.*, 553, 554. For the debates see the *Cong. Record*, 65th Cong., 1st Sess. The amended text of the House bill is in *House Report* 30; the texts of the conference reports are in the *House and Senate Journals*.

An Act To punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes.

TITLE I.

SECTION 1. That (a) whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of any foreign nation, goes upon, enters, flies over, or otherwise obtains information concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base, coaling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, or other place connected with the national defense, owned or constructed, or in progress of construction by the United States or under the control of the United States, or of any of its officers or agents, or within the exclusive jurisdiction of the United States, or any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for

use in time of war are being made, prepared, repaired, or stored, under any contract or agreement with the United States, or with any person on behalf of the United States, or otherwise on behalf of the United States, or any prohibited place within the meaning of section six of this title; or (b) whoever for the purpose aforesaid, and with like intent or reason to believe, copies, takes, makes, or obtains, or attempts, or induces or aids another to copy, take, make, or obtain, any sketch, photograph, photographic negative, blue print, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense; or (c) whoever, for the purpose aforesaid, receives or obtains or agrees or attempts or induces or aids another to receive or obtain from any person, or from any source whatever, any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, instrument, appliance, or note, of anything connected with the national defense, knowing or having reason to believe, at the time he receives or obtains, or agrees or attempts or induces or aids another to receive or obtain it, that it has been or will be obtained, taken, made or disposed of by any person contrary to the provisions of this title; or (d) whoever, lawfully or unlawfully having possession of, access to, control over, or being intrusted with any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, instrument, appliance, or note relating to the national defense, willfully communicates or transmits or attempts to communicate or transmit the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it; or (e) whoever, being intrusted with or having lawful possession or control of any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, note, or information, relating to the national defense, through gross negligence permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed, shall be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or both.

SEC. 2. (a) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to, or aids or induces another to, communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by imprisonment for not more than twenty years: *Provided*, That whoever shall violate the provisions of subsection (a) of this section in time of war shall be punished by death or by imprisonment for not more than thirty years; and (b) whoever, in time of war, with intent that the same shall be communicated to the enemy, shall collect, record, publish, or communicate, or attempt to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the armed forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operations, or with respect to any works or measures undertaken for or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense, which might be useful to the enemy, shall be punished by death or by imprisonment for not more than thirty years.

SEC. 3. Whoever, when the United States is at war, shall willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies and whoever, when the United States is at war, shall willfully cause or attempt to cause insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States, or shall willfully obstruct the recruiting or enlistment service of the United States, to the injury of the service or of the United States, shall be punished by a fine

of not more than $10,000 or imprisonment for not more than twenty years, or both.[1]

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Title XII.

Section 1. Every letter, writing, circular, postal card, picture, print, engraving, photograph, newspaper, pamphlet, book, or other publication, matter or thing, of any kind, in

[1] An act of May 16, 1918, amended Section 3 to read as follows: "Whoever, when the United States is at war, shall willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States, or to promote the success of its enemies, or shall willfully make or convey false reports or false statements, or say or do anything except by way of bona fide and not disloyal advice to an investor or investors, with intent to obstruct the sale by the United States of bonds or other securities of the United States or the making of loans by or to the United States, and whoever, when the United States is at war, shall willfully cause, or attempt to cause, or incite or attempt to incite, insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States, or shall willfully obstruct or attempt to obstruct the recruiting or enlistment service of the United States, and whoever, when the United States is at war, shall willfully utter, print, write, or publish any disloyal, profane, scurrilous, or abusive language about the form of government of the United States, or the Constitution of the United States, or the military or naval forces of the United States, or the flag of the United States, or the uniform of the Army or Navy of the United States, or any language intended to bring the form of government of the United States, or the Constitution of the United States, or the military or naval forces of the United States, or the flag of the United States, or the uniform of the Army or Navy of the United States into contempt, scorn, contumely, or disrepute, or shall willfully utter, print, write, or publish any language intended to incite, provoke, or encourage resistance to the United States, or to promote the cause of its enemies, or shall willfully display the flag of any foreign enemy, or shall willfully by utterance, writing, printing, publication, or language spoken, urge, incite, or advocate any curtailment of production in this country of any thing or things, product or products, necessary or essential to the prosecution of the war in which the United States may be engaged, with intent by such curtailment to cripple or hinder the United States in the prosecution of the war, and whoever shall willfully advocate, teach, defend, or suggest the doing of any of the acts or things in this section enumerated, and whoever shall by word or act support or favor the cause of any country with which the United States is at war or by word or act oppose the cause of the United States therein, shall be punished by a fine of not more than $10,000 or imprisonment for not more than twenty years, or both: *Provided*, That any employee or official of the United States Government who commits any disloyal act or utters any unpatriotic or disloyal language, or who, in an abusive and violent manner criticizes the Army or Navy or the flag of the United States shall be at once dismissed from the service. . . ."

violation of any of the provisions of this Act is hereby declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier. . . .

Sec. 2. Every letter, writing, circular, postal card, picture, print, engraving, photograph, newspaper, pamphlet, book, or other publication, matter or thing, of any kind, containing any matter advocating or urging treason, insurrection, or forcible resistance to any law of the United States, is hereby declared to be nonmailable.

No. 204. The Fourteen Points

January 8, 1918

In a note to the belligerent Powers, December 18, 1916, Secretary of State Lansing, speaking for President Wilson, suggested that peace terms should be stated. January 22, 1917, in an address to the Senate, President Wilson outlined the general character of the peace that he thought should be made, further elaborating the subject in the address to the two houses of Congress, on January 8, 1918, which set forth the "fourteen points." On February 11, in an address in which he discussed the German and Austrian peace statements, President Wilson summarized his peace terms under four heads, following this on July 4, 1918, at Mount Vernon, with another summary in four points.

References. — *Text* in *House and Senate Journals*, 65th Cong., 2d Sess. The note of December 18, 1916, and the addresses of February 11 and July 4, 1918, are in Albert Shaw, *Messages and Papers of Woodrow Wilson*, I.

What we demand in this war, therefore, is nothing peculiar to ourselves. It is that the world be made fit and safe to live in; and particularly that it be made safe for every peace-loving nation which, like our own, wishes to live its own life, determine its own institutions, be assured of justice and fair dealing by the other peoples of the world as against force and selfish aggression.

All the peoples of the world are in effect partners in this interest, and for our own part we see very clearly that unless justice be done to others it will not be done to us. The program of the world's peace, therefore, is our program; and that program, the only possible program, as we see it, is this:

1. Open covenants of peace, openly arrived at, after which there shall be no private international understandings of any

kind but diplomacy shall proceed always frankly and in the public view.

2. Absolute freedom of navigation upon the seas, outside territorial waters, alike in peace and in war, except as the seas may be closed in whole or in part by international action for the enforcement of international covenants.

3. The removal, so far as possible, of all economic barriers and the establishment of an equality of trade conditions among all the nations consenting to the peace and associating themselves for its maintenance.

4. Adequate guarantees given and taken that national armaments will be reduced to the lowest points consistent with domestic safety.

5. A free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined.

6. The evacuation of all Russian territory and such a settlement of all questions affecting Russia as will secure the best and freest co-operation of the other nations of the world in obtaining for her an unhampered and unembarrassed opportunity for the independent determination of her own political development and national policy and assure her of a sincere welcome into the society of free nations under institutions of her own choosing; and, more than a welcome, assistance also of every kind that she may need and may herself desire. The treatment accorded Russia by her sister nations in the months to come will be the acid test of their good will, of their comprehension of her needs as distinguished from their own interests, and of their intelligent and unselfish sympathy.

7. Belgium, the whole world will agree, must be evacuated and restored, without any attempt to limit the sovereignty which she enjoys in common with all other free nations. No other single act will serve as this will serve to restore confidence among the nations in the laws which they have themselves set and determined for the government of their relations with one another. Without this healing act the whole structure and validity of international law is forever impaired.

8. All French territory should be freed and the invaded portions restored, and the wrong done to France by Prussia in 1871 in the matter of Alsace-Lorraine, which has unsettled the peace of the world for nearly fifty years, should be righted, in order that peace may once more be made secure in the interest of all.

9. A readjustment of the frontiers of Italy should be effected along clearly recognizable lines of nationality.

10. The peoples of Austria-Hungary, whose place among the nations we wish to see safeguarded and assured, should be accorded the freest opportunity of autonomous development.

11. Rumania, Serbia, and Montenegro should be evacuated; occupied territories restored; Serbia accorded free and secure access to the sea; and the relations of the several Balkan states to one another determined by friendly counsel along historically established lines of allegiance and nationality; and international guarantees of the political and economic independence and territorial integrity of the several Balkan states should be entered into.

12. The Turkish portions of the present Ottoman Empire should be assured a secure sovereignty, but the other nationalities which are now under Turkish rule should be assured an undoubted security of life and an absolutely unmolested opportunity of autonomous development, and the Dardanelles should be permanently opened as a free passage to the ships and commerce of all nations under international guarantees.

13. An independent Polish state should be erected which should include the territories inhabited by indisputably Polish populations, which should be assured a free and secure access to the sea, and whose political and economic independence and territorial integrity should be guaranteed by international covenant.

14. A general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike.

No. 205. Railway Control Act

March 21, 1918

A PROCLAMATION of December 26, 1917, placing the railways of the country under the control of the President for purposes of national defense, was shortly followed by other proclamations extending Federal control to telegraphs, telephones, cables, the American Railway Express, etc. A bill for the operation of transportation systems under Federal control, etc., introduced by Senator Smith of South Carolina on February 5, 1918, was debated from February 11 to February 22, and on the latter date passed without a division. The House amended the Senate bill by substituting a bill of similar purport introduced on February 8 by Representative Sims of Tennessee, and passed the measure in this form on February 28 by a vote of 337 to 6. A first report of a conference committee was recommitted in each house, but a second report was agreed to by the Senate on March 13 by a vote of 47 to 8, and by the House the following day by a vote of 303 to 26, and on March 21 the act was approved. An act of July 11, 1919, relinquished the control of telegraph, telephone, cable and radio systems as of July 31, and the Transportation Act of February 28, 1920 [No. 207], terminated the control of railways as of March 1.

REFERENCES. — *Text* in *U. S. Stat. at Large*, XL, Part I, 451–458. The various proclamations and acts referred to above are in *ibid.*, XL, Part II; XLI, Parts I and II. For the debates see the *Cong. Record*, 65th Cong., 2d Sess. The Senate report of February 7 is *Senate Report* 246; the first conference report is *House Report* 371; the second conference report is *House Report* 376. See also the *Annual Report* of the Director-General for 1918 (McAdoo) and 1919 (Hines).

An Act To provide for the operation of transportation systems while under Federal control, for the just compensation of their owners, and for other purposes.

Be it enacted . . . , That the President, having in time of war taken over the possession, use, control, and operation (called herein Federal control) of certain railroads and systems of transportation (called herein carriers), is hereby authorized to agree with and to guarantee to any such carrier making operating returns to the Interstate Commerce Commission, that during the period of such Federal control it shall receive as just compensation an annual sum, payable from time to time in reasonable installments, for each year and pro rata for any fractional year of such Federal control, not exceeding a sum equivalent as nearly as may be to its average annual railway

operating income for the three years ended . . . [June 30, 1917]. . . .

That any railway operating income accruing during the period of Federal control in excess of such just compensation shall remain the property of the United States. . . . The average annual railway operating income shall be ascertained by the Interstate Commerce Commission and certified by it to the President. Its certificate shall, for the purpose of such agreement, be taken as conclusive of the amount of such average annual railway operating income. . . .

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Every such agreement shall also contain adequate and appropriate provisions for the maintenance, repair, renewals, and depreciation of the property, for the creation of any reserves or reserve funds found necessary in connection therewith, and for such accounting and adjustments of charges and payments, both during and at the end of Federal control as may be requisite in order that the property of each carrier may be returned to it in substantially as good repair and in substantially as complete equipment as it was in at the beginning of Federal control, and also that the United States may, by deductions from the just compensations or by other proper means and charges, be reimbursed for the cost of any additions, repairs, renewals, and betterments to such property not justly chargeable to the United States. . . .

The President is further authorized in such agreement to make all other reasonable provisions, not inconsistent with the provisions of this Act or of the . . . [Army Appropriation Act of August 29, 1916] . . . that he may deem necessary or proper for such Federal control or for the determination of the mutual rights and obligations of the parties to the agreement arising from or out of such Federal control.

If the President shall find that the condition of any carrier was during all or a substantial portion of the period of three years ended . . . [June 30, 1917] . . . , because of non-operation, receivership, or where recent expenditures for additions or improvements or equipment were not fully reflected in the operating railway income of said three years or a substantial portion thereof, or because of any undeveloped or abnormal

conditions, so exceptional as to make the basis of earnings hereinabove provided for plainly inequitable as a fair measure of just compensation, then the President may make with the carrier such agreement for such amount as just compensation as under the circumstances of the particular case he shall find just.

That every railroad not owned, controlled, or operated by another carrier company, and which has heretofore competed for traffic with a railroad or railroads of which the President has taken possession, use, and control, or which connects with such railroads and is engaged as a common carrier in general transportation, shall be held and considered as within "Federal control," as herein defined, and necessary for the prosecution of the war, and shall be entitled to the benefit of all the provisions of this Act: *Provided, however*, That nothing in this paragraph shall be construed as including any street or interurban electric railway which has as its principal source of operating revenue urban, suburban, or interurban passenger traffic, or sale of power, heat and light, or both. . . .

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SEC. 2. That if no agreement is made, or pending the execution of an agreement, the President may nevertheless pay to any carrier while under Federal control an annual amount, payable in reasonable installments, not exceeding ninety per centum of the estimated annual amount of just compensation, remitting such carrier, in case where no agreement is made, to its legal rights for any balance claimed to the remedies provided in section three hereof. Any amount thereafter found due such carrier above the amount paid shall bear interest at the rate of six per centum per annum. . . .

SEC. 3. That all claims for just compensation not adjusted (as provided in section one) shall, on the application of the President or of any carrier, be submitted to boards, each consisting of three referees to be appointed by the Interstate Commerce Commission, members of which and the official force thereof being eligible for service on such boards without additional compensation. . . . The President is authorized to enter into an agreement with such carrier for just compensation upon a basis not in excess of that reported by such board, and may include therein provisions similar to those authorized under

section one. Failing such agreement, either the United States or such carrier may file a petition in the Court of Claims for the purpose of determining the amount of such just compensation, and in the proceedings in said court the report of said referees shall be prima facie evidence of the amount of just compensation and of the facts therein stated. Proceedings in the Court of Claims under this section shall be given precedence and expedited in every practicable way.

SEC. 4. That the just compensation that may be determined as hereinbefore provided by agreement or that may be adjudicated by the Court of Claims, shall be increased by an amount reckoned at a reasonable rate per centum to be fixed by the President upon the cost of any additions and betterments, less retirements, and upon the cost of road extensions to the property of such carrier made by such carrier with the approval of or by order of the President while such property is under Federal control.

SEC. 5. That no carrier while under Federal control shall, without the prior approval of the President, declare or pay any dividend in excess of its regular rate of dividends during the three years ended . . . [June 30, 1917] . . . : *Provided, however*, That such carriers as have paid no regular dividends or no dividends during said period may, with the prior approval of the President, pay dividends at such rate as the President may determine.

SEC. 6. That the sum of $500,000,000 is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, which, together with any funds available from any operating income of said carriers, may be used by the President as a revolving fund for the purpose of paying the expenses of the Federal control, and so far as necessary the amount of just compensation, and to provide terminals, motive power, cars, and other necessary equipment, such terminals, motive power, cars, and equipment to be used and accounted for as the President may direct and to be disposed of as Congress may hereafter by law provide.

The President may also make or order any carrier to make any additions, betterments, or road extensions, and to provide terminals, motive power, cars, and other equipment necessary

or desirable for war purposes or in the public interest on or in connection with the property of any carrier. He may from said revolving fund advance to such carrier all or any part of the expense of such additions, betterments, or road extensions, and to provide terminals, motive power, cars, and other necessary equipment so ordered and constructed by such carrier or by the President, such advances to be charged against such carrier and to bear interest at such rate and be payable on such terms as may be determined by the President, to the end that the United States may be fully reimbursed for any sums so advanced.

Any loss claimed by any carrier by reason of any such additions, betterments, or road extensions so ordered and constructed may be determined by agreement between the President and such carrier; failing such agreement the amount of such loss shall be ascertained as provided in section three hereof.

From said revolving fund the President may expend such an amount as he may deem necessary or desirable for the utilization and operation of canals, or for the purchase, construction, or utilization and operation of boats, barges, tugs, and other transportation facilities on the inland, canal, and coastwise waterways, and may in the operation and use of such facilities create or employ such agencies and enter into such contracts and agreements as he shall deem in the public interest.

SEC. 7. That for the purpose of providing funds requisite for maturing obligations or for other legal and proper expenditures, or for reorganizing railroads in receivership, carriers may, during the period of Federal control, issue such bonds, notes, equipment trust certificates, stock, and other forms of securities, secured or unsecured by mortgage, as the President may first approve as consistent with the public interest. The President may, out of the revolving fund created by this Act, purchase for the United States all or any part of such securities at prices not exceeding par, and may sell such securities whenever in his judgment it is desirable at prices not less than the cost thereof. . . .

SEC. 8. That the President may execute any of the powers herein and heretofore granted him with relation to Federal control through such agencies as he may determine, and may fix the reasonable compensation for the performance of services in

connection therewith, and may avail himself of the advice, assistance, and cooperation of the Interstate Commerce Commission and of the members and employees thereof, and may also call upon any department, commission, or board of the Government for such services as he may deem expedient. But no such official or employee of the United States shall receive any additional compensation for such services except as now permitted by law.

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SEC. 10. . . . That during the period of Federal control, whenever in his opinion the public interest requires, the President may initiate rates, fares, charges, classifications, regulations, and practices by filing the same with the Interstate Commerce Commission, which said rates, fares, charges, classifications, regulations, and practices shall not be suspended by the commission pending final determination.

Said rates, fares, charges, classifications, regulations, and practices shall be reasonable and just and shall take effect at such time and upon such notice as he may direct, but the Interstate Commerce Commission shall, upon complaint, enter upon a hearing concerning the justness and reasonableness of so much of any order of the President as establishes or changes any rate, fare, charge, classification, regulation, or practice of any carrier under Federal control. . . . In determining any question concerning any such rates, fares, charges, classifications, regulations, or practices or changes therein, the Interstate Commerce Commission shall give due consideration to the fact that the transportation systems are being operated under a unified and coordinated national control and not in competition.

After full hearing the commission may make such findings and orders as are authorized by the Act to regulate commerce as amended, and said findings and orders shall be enforced as provided in said Act. . . .

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SEC. 12. That moneys and other property derived from the operation of the carriers during Federal control are hereby declared to be the property of the United States. Unless otherwise directed by the President, such moneys shall not be covered into the Treasury, but such moneys and property shall remain in the custody of the same officers, and the accounting thereof

shall be in the same manner and form as before Federal control. Disbursements therefrom shall, without further appropriation, be made in the same manner as before Federal control and for such purposes as under the Interstate Commerce Commission classification of accounts in force on . . . [December 27, 1917] . . . are chargeable to operating expenses or to railway tax accruals and for such other purposes in connection with Federal control as the President may direct. . . .

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SEC. 14. That the Federal control of railroads and transportation systems herein and heretofore provided for shall continue for and during the period of the war and for a reasonable time hereafter, which shall not exceed one year and nine months next following the date of the proclamation by the President of the exchange of ratifications of the treaty of peace: *Provided, however*, That the President may, prior to . . . [July 1, 1918] . . . , relinquish control of all or any part of any railroad or system of transportation, further Federal control of which the President shall deem not needful or desirable; and the President may at any time during the period of Federal control agree with the owners thereof to relinquish all or any part of any railroad or system of transportation. The President may relinquish all railroads and systems of transportation under Federal control at any time he shall deem such action needful or desirable. No right to compensation shall accrue to such owners from and after the date of relinquishment for the property so relinquished.

SEC. 15. That nothing in this Act shall be construed to amend, repeal, impair, or affect the existing laws or powers of the States in relation to taxation or the lawful police regulations of the several States, except wherein such laws, powers, or regulations may affect the transportation of troops, war materials, Government supplies, or the issue of stocks and bonds.

SEC. 16. That this Act is expressly declared to be emergency legislation enacted to meet conditions growing out of war; and nothing herein is to be construed as expressing or prejudicing the future policy of the Federal Government concerning the ownership, control, or regulation of carriers or the method or basis of the capitalization thereof.

Approved, March 21, 1918.

No. 206. Eighteenth Amendment

January 29, 1919

A LARGE number of bills and resolutions relating to national prohibition were introduced in the 65th Congress. A resolution proposing a constitutional amendment offered on April 4, 1917, by Senator Sheppard of Texas, was reported with amendments on June 11 from the Committee on the Judiciary, and on July 31, by a vote of 65 to 20, was adopted. In the House the bill was referred to the Committee on the Judiciary, but no further action was taken during the session. December 14, in the second session, the bill was reported, and on the 17th passed the House by a vote of 282 to 128. A proclamation of the Secretary of State, January 29, 1919, announced that the amendment had become a part of the Constitution. The amendment became operative, in accordance with the provision of its first paragraph, one year after ratification. The National Prohibition act of October 28, 1919, commonly known as the Volstead act, which was passed over the veto of President Wilson, went into effect at once, except certain sections of Title II, which became operative with the coming into force of the Amendment. A supplementary enforcement act was approved November 23, 1921.

REFERENCES. — *Text* in *U. S. Stat. at Large*, XL, Part II, 1941. The debates are in the *Cong. Record*, 65th Cong., 1st and 2d Sess. The Volstead act is in *U. S. Stat. at Large*, XLI, Part I, 305–323; the supplementary act of 1921, *ibid.*, XLII, Part I, 222–224. On the validity of the Amendment see Rhode Island v. Palmer, 253 *U. S. Sup. Ct. Reports*, 350.

ARTICLE XVIII.

1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the Legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

No. 207. Transportation Act

February 28, 1920

A BILL to terminate Federal control of railways, provide for the settlement of disputes between railways and their employees, and for other purposes, was introduced in the House on November 8, 1919, by Representative Esch of Wisconsin, and referred to the Committee on Interstate and Foreign Commerce, which already had before it a number of other bills relating to the same subjects. The bill was reported without amendment on November 10, and debated from the 11th to the 17th, when it passed by a vote of 204 to 161. A report submitted by Senator Cummins of Iowa on December 8, in the second session, amended the House bill by substituting a Senate bill of similar purport, and in this form the bill passed the Senate on December 20, the vote being 46 to 30. The final form of the bill was determined by a conference committee, the report of the committee being agreed to by the House on February 21 by a vote of 250 to 150, and by the Senate on February 23 by a vote of 47 to 17. On February 28 the act was approved.

The first part of the Esch-Cummins act, omitted in the extracts which follow, provides for the termination of Federal control of railways on March 1, 1920, and the settlement of various matters arising out of such control. The Railroad Labor Board created by the act was abolished by an act of May 20, 1926, creating a Board of Mediation for the adjustment of railway labor disputes.

REFERENCES. — *Text* in *U. S. Stat. at Large*, XLI, Part I, 456–499. For the debates see the *Cong. Record*, 66th Cong., 1st and 2d Sess. The Esch report of November 10 is *House Report* 456; the conference report of February 18 is *House Report* 650. See also R. MacVeagh, *The Transportation Act of 1920;* M. Sakolski, *Practical Tests of the Transportation Act*, in *Polit. Science Quart.*, September, 1921.

An Act To provide for the termination of Federal control of railroads and systems of transportation; to provide for the settlement of disputes between carriers and their employees; to further amend an Act entitled "An Act to regulate commerce," approved February 4, 1887, as amended, and for other purposes.

SEC. 301. It shall be the duty of all carriers and their officers, employees, and agents to exert every reasonable effort and adopt every available means to avoid any interruption to the operation of any carrier growing out of any dispute between the carrier and the employees or subordinate officials thereof. All such disputes shall be considered and, if possible, decided in conference between representatives designated and authorized so to confer by the carriers, or the employees or subordinate officials

thereof, directly interested in the dispute. If any dispute is not decided in such conference, it shall be referred by the parties thereto to the board which under the provisions of this title is authorized to hear and decide such dispute.

SEC. 302. Railroad Boards of Labor Adjustment may be established by agreement between any carrier, group of carriers, or the carriers as a whole, and any employees or subordinate officials of carriers, or organization or group of organizations thereof.

SEC. 303. Each Adjustment Board shall, (1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon the written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute, (3) upon the Adjustment Board's own motion, or (4) upon the request of the Labor Board whenever such board is of the opinion that the dispute is likely substantially to interrupt commerce, receive for hearing, and as soon as practicable and with due diligence decide, any dispute involving only grievances, rules, or working conditions, not decided as provided in section 301, between the carrier and its employees or subordinate officials, who are, or any organization thereof which is, in accordance with the provisions of section 302, represented upon any such Adjustment Board.

SEC. 304. There is hereby established a board to be known as the "Railroad Labor Board" and to be composed of nine members as follows:

(1) Three members constituting the labor group, representing the employees and subordinate officials of the carriers, to be appointed by the President, by and with the advice and consent of the Senate, from not less than six nominees whose nominations shall be made and offered by such employees in such manner as the Commission shall by regulation prescribe;

(2) Three members, constituting the management group, representing the carriers, to be appointed by the President, by and with the advice and consent of the Senate, from not less than six nominees whose nominations shall be made and offered by the carriers in such manner as the Commission shall by regulation prescribe; and

(3) Three members, constituting the public group, representing the public, to be appointed directly by the President, by and with the advice and consent of the Senate. . . .

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SEC. 307. (a) The Labor Board shall hear, and as soon as practicable and with due diligence decide, any dispute involving grievances, rules, or working conditions, in respect to which any Adjustment Board certifies to the Labor Board that in its opinion the Adjustment Board has failed or will fail to reach a decision within a reasonable time, or in respect to which the Labor Board determines that any Adjustment Board has so failed or is not using due diligence in its consideration thereof. In case the appropriate Adjustment Board is not organized under the provisions of section 302, the Labor Board, (1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon a written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute, or (3) upon the Labor Board's own motion if it is of the opinion that the dispute is likely substantially to interrupt commerce, shall receive for hearing, and as soon as practicable and with due diligence decide, any dispute involving grievances, rules, or working conditions which is not decided as provided in section 301 and which such Adjustment Board would be required to receive for hearing and decision under the provisions of section 303.

(b) The Labor Board, (1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon a written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute, or (3) upon the Labor Board's own motion if it is of the opinion that the dispute is likely substantially to interrupt commerce, shall receive for hearing, and as soon as practicable and with due diligence decide, all disputes with respect to the wages or salaries of employees or subordinate officials of carriers, not decided as provided in section 301. The Labor Board may upon its own motion within ten days after the decision, in accordance with the provisions of section 301,

of any dispute with respect to wages or salaries of employees or subordinate officials of carriers, suspend the operation of such decision if the Labor Board is of the opinion that the decision involves such an increase in wages or salaries as will be likely to necessitate a substantial readjustment of the rates of any carrier. The Labor Board shall hear any decision so suspended and as soon as practicable and with due diligence decide to affirm or modify such suspended decision. . . .

(d) All the decisions of the Labor Board in respect to wages or salaries and of the Labor Board or an Adjustment Board in respect to working conditions of employees or subordinate officials of carriers shall establish rates of wages and salaries and standards of working conditions which in the opinion of the board are just and reasonable. In determining the justness and reasonableness of such wages and salaries or working conditions the board shall, so far as applicable, take into consideration among other relevant circumstances:

(1) The scales of wages paid for similar kinds of work in other industries;

(2) The relation between wages and the cost of living;

(3) The hazards of the employment;

(4) The training and skill required;

(5) The degree of responsibility;

(6) The character and regularity of the employment; and

(7) Inequalities of increases in wages or of treatment, the result of previous wage orders or adjustments.

* * * * * * * *

SEC. 407. The first paragraph of section 5 of the Interstate Commerce Act is hereby amended to read as follows: . . .

"(4) The Commission shall as soon as practicable prepare and adopt a plan for the consolidation of the railway properties of the continental United States into a limited number of systems. In the division of such railways into such systems under such plan, competition shall be preserved as fully as possible and wherever practicable the existing routes and channels of trade and commerce shall be maintained. Subject to the foregoing requirements, the several systems shall be so arranged that the cost of transportation as between competitive systems and as related to the values of the properties through which the service

is rendered shall be the same, so far as practicable, so that these systems can employ uniform rates in the movement of competitive traffic and under efficient management earn substantially the same rate of return upon the value of their respective railway properties.

"(5) When the Commission has agreed upon a tentative plan, it shall give the same due publicity and upon reasonable notice, including notice to the Governor of each State, shall hear all persons who may file or present objections thereto. The Commission is authorized to prescribe a procedure for such hearings and to fix a time for bringing them to a close. After the hearings are at an end, the Commission shall adopt a plan for such consolidation and publish the same; but it may at any time thereafter, upon its own motion or upon application, reopen the subject for such changes or modifications as in its judgment will promote the public interest. The consolidations herein provided for shall be in harmony with such plan.

"(6) It shall be lawful for two or more carriers by railroad, subject to this Act, to consolidate their properties or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership, management, and operation, under the following conditions:

"(a) The proposed consolidation must be in harmony with and in furtherance of the complete plan of consolidation mentioned in paragraph (5) and must be approved by the Commission;

"(b) The bonds at par of the corporation which is to become the owner of the consolidated properties, together with the outstanding capital stock at par of such corporation, shall not exceed the value of the consolidated properties as determined by the Commission. The value of the properties sought to be consolidated shall be ascertained by the Commission under section 19a of this Act, and it shall be the duty of the Commission to proceed immediately to the ascertainment of such value for the properties involved in a proposed consolidation upon the filing of the application for such consolidation.

"(c) Whenever two or more carriers propose a consolidation under this section, they shall present their application therefor to the Commission, and thereupon the Commission shall notify

the Governor of each State in which any part of the properties sought to be consolidated is situated and the carriers involved in the proposed consolidation, of the time and place for a public hearing. If after such hearing the Commission finds that the public interest will be promoted by the consolidation and that the conditions of this section have been or will be fulfilled, it may enter an order approving and authorizing such consolidation, with such modifications and upon such terms and conditions as it may prescribe, and thereupon such consolidation may be effected, in accordance with such order, if all the carriers involved assent thereto, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

"(7) The power and authority of the Commission to approve and authorize the consolidation of two or more carriers shall extend and apply to the consolidation of four express companies into the American Railway Express Company, a Delaware corporation, if application for such approval and authority is made to the Commission within thirty days after the passage of this amendatory Act; and pending the decision of the Commission such consolidation shall not be dissolved." . . .

No. 208. Nineteenth Amendment

August 26, 1920

The question of so amending the Constitution as to extend the suffrage to women had been before Congress for several years, and a number of resolutions relating to the subject were presented in the first session of the 66th Congress. A resolution proposing a constitutional amendment, introduced on May 19, 1919, by Representative Mann of Illinois, was favorably reported without amendment the next day, and on May 21 passed the House by a vote of 304 to 89. The resolution was reported in the Senate on May 28 without amendment, and on June 4 passed that body by a vote of 56 to 25. The ratification of the amendment by the legislatures of three-fourths of the States was proclaimed by the Secretary of State on August 26, 1920. On June 23 President Wilson took the unusual course of urging the Governor of Tennessee to insure favorable action by the Legislature of that State, the ratification of Tennessee being needed to bring the number of States to thirty-six and thereby enable women to vote in the approaching election.

REFERENCES. — *Text* in *U. S. Stat. at Large*, XLI, Part II, 1823. The principal debate, for which see the *Cong. Record*, 66th Cong., 1st Sess., was on June 3.

ARTICLE XIX

1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

2. Congress shall have power, by appropriate legislation, to enforce the provisions of this article.

No. 209. Budget Act

June 10, 1921

A BILL to establish a national budget system, introduced by Senator McCormick of Illinois on April 25, 1921, was reported without amendment on the same day from the Committee on Expenditures in the Executive Departments, and the next day passed without a division. On May 5 the bill with amendments passed the House. The report of the conference committee to which the bill was referred was agreed to by the Senate on May 26 without a division, and by the House on the 27th by a vote of 335 to 3. On June 10 the act was approved.

REFERENCES. — *Text* in *U. S. Stat. at Large*, XLII, Part I, 20–27. For the brief debates see the *Cong. Record*, 67th Cong., 1st Sess. The conference report is *Senate Doc.* 15 and *House Report* 96. See also C. G. Dawes, *The First Year of the Budget of the United States*.

An Act To provide a national budget system and an independent audit of Government accounts, and for other purposes.

SEC. 201. The President shall transmit to Congress on the first day of each regular session, the Budget, which shall set forth in summary and in detail:

(a) Estimates of the expenditures and appropriations necessary in his judgment for the support of the Government for the ensuing fiscal year; except that the estimates for such year for the Legislative Branch of the Government and the Supreme Court of the United States shall be transmitted to the President on or before October 15th of each year, and shall be included by him in the Budget without revision;

(b) His estimates of the receipts of the Government during the ensuing fiscal year, under (1) laws existing at the time the Budget is transmitted and also (2) under the revenue proposals, if any, contained in the Budget;

(c) The expenditures and receipts of the Government during the last completed fiscal year;

(d) Estimates of the expenditures and receipts of the Government during the fiscal year in progress;

(e) The amount of annual, permanent, or other appropriations, including balances of appropriations for prior fiscal years, available for expenditure during the fiscal year in progress;

(f) Balanced statements of (1) the condition of the Treasury at the end of the last completed fiscal year, (2) the estimated condition of the Treasury at the end of the fiscal year in progress, and (3) the estimated condition of the Treasury at the end of the ensuing fiscal year if the financial proposals contained in the Budget are adopted;

(g) All essential facts regarding the bonded and other indebtedness of the Government; and

(h) Such other financial statements and data as in his opinion are necessary or desirable in order to make known in all practicable detail the financial condition of the Government.

SEC. 202. (a) If the estimated receipts for the ensuing fiscal year contained in the Budget, on the basis of laws existing at the time the Budget is transmitted, plus the estimated amounts in the Treasury at the close of the fiscal year in progress, available for expenditure in the ensuing fiscal year, are less than the estimated expenditures for the ensuing fiscal year contained in the Budget, the President in the Budget shall make recommendations to Congress for new taxes, loans, or other appropriate action to meet the estimated deficiency.

(b) If the aggregate of such estimated receipts and such estimated amounts in the Treasury is greater than such estimated expenditures for the ensuing fiscal year, he shall make such recommendations as in his opinion the public interests require.

SEC. 203. [Supplementary or deficiency estimates to meet necessary expenses may also be transmitted.]

* * * * * * * *

SEC. 206. No estimate or request for an appropriation and no request for an increase in an item of any such estimate or request, and no recommendation as to how the revenue needs of the Government should be met, shall be submitted to Congress or any committee thereof by any officer or employee of any department or establishment, unless at the request of either House of Congress.

SEC. 207. There is hereby created in the Treasury Department a Bureau to be known as the Bureau of the Budget. There shall be in the Bureau a Director and an Assistant Director. . . . The Bureau, under such rules and regulations as the President may prescribe, shall prepare for him the Budget, the alternative Budget, and any supplemental or deficiency estimates, and to this end shall have authority to assemble, correlate, revise, reduce, or increase the estimates of the several departments or establishments.

* * * * * * * *

SEC. 209. The Bureau, when directed by the President, shall make a detailed study of the departments and establishments for the purpose of enabling the President to determine what changes (with a view of securing greater economy and efficiency in the conduct of the public service) should be made in (1) the existing organization, activities, and methods of business of such departments or establishments, (2) the appropriations therefor, (3) the assignment of particular activities to particular services, or (4) the regrouping of services. The results of such study shall be embodied in a report or reports to the President, who may transmit to Congress such report or reports or any part thereof with his recommendations on the matters covered thereby.

[Title III of the act provides for the creation of a General Accounting Office under a Comptroller General of the United States, the latter to be appointed by the President, with the advice and consent of the Senate, for fifteen years, and to be removable for cause either by joint resolution of Congress or by impeachment. The offices of Comptroller and Assistant Comptroller of the Treasury, and of the six auditors, are abolished as of July 1, 1921. The organization, duties, etc., of the General Accounting Office are prescribed.]

Approved, June 10, 1921.

No. 210. Treaty of Peace with Germany

August 25, 1921

A JOINT resolution of July 2, 1921, terminating the war between the United States and the Governments of Germany and Austria-Hungary, set forth, in Section 2, "that in making this declaration, and as a part of it, there are expressly reserved to the United States of America and its nationals any and all rights, privileges, indemnities, reparations, or advantages, together with the right to enforce the same, to which it or they have become entitled under the terms of the armistice signed November 11, 1918, or any extensions or modifications thereof; or which were acquired by or are in the possession of the United States of America by reason of its participation in the war or to which its nationals have thereby become rightfully entitled; or which, under the treaty of Versailles, have been stipulated for its or their benefit; or to which it is entitled as one of the principal allied and associated powers; or to which it is entitled by virtue of any Act or Acts of Congress; or otherwise." Section 5 further provided that "all property of the Imperial German Government, or its successor or successors, and of all German nationals which was, on April 6, 1917, in or has since that date come into the possession or under control of, or has been the subject of a demand by the United States of America or of any of its officers, agents, or employees, from any source or by any agency whatsoever . . . [and all similar property of the Imperial and Royal Austro-Hungarian Government or its nationals, as of December 7, 1917] . . . shall be retained by the United States of America and no disposition thereof made, except as shall have been heretofore or specifically hereafter shall be provided by law until such time as the Imperial German Government and the Imperial and Royal Austro-Hungarian Government, or their successor or successors, shall have respectively made suitable provision for the satisfaction of all claims against said Governments respectively, of all persons, wheresoever domiciled, who owe permanent allegiance to the United States of America and who have suffered, through the acts of the Imperial German Government, or its agents, or the Imperial and Royal Austro-Hungarian Government, or its agents, since July 31, 1914, loss, damage, or injury to their persons or property, directly or indirectly, whether through the ownership of shares of stock in German, Austro-Hungarian, American or other corporations, or in consequence of hostilities or of any operations of war, or otherwise, and also shall have granted to persons owing permanent allegiance to the United States of America most-favored-nation treatment, whether the same be national or otherwise, in all matters affecting residence, business, profession, trade, navigation, commerce and industrial property rights, and until the Imperial German Government and the Imperial and Royal Austro-Hungarian Government, or their successor or successors, shall have respectively confirmed to the United States of America all fines, forfeitures, penalties, and seizures imposed or made by the United States of America during the war, whether in respect to the property of the Imperial German Government or German nationals or the Imperial and Royal Austro-

Hungarian Government or Austro-Hungarian nationals, and shall have waived any and all pecuniary claims against the United States of America."

The treaty with Germany, signed at Berlin on August 25, was ratified by the Senate on October 18 with the understanding "that the United States shall not be represented or participate in any body, agency or commission, nor shall any person represent the United States as a member of any body, agency or commission in which the United States is authorized to participate by this treaty, unless and until an Act of the Congress of the United States shall provide for such representation or participation"; and "that the rights and advantages which the United States is entitled to have and enjoy under this Treaty embrace the rights and advantages of nationals of the United States specified in the Joint Resolution or in the provisions of the Treaty of Versailles to which this Treaty refers." The treaty was ratified by the German Government on November 2, and on November 14, following the exchange of ratifications at Berlin on the 11th, the treaty was proclaimed. The peace treaty with Austria, signed at Vienna on August 24, ratified by Austria on October 8 and by the Senate on October 18, and the peace treaty with Hungary, signed at Budapest on August 29 and ratified by the Senate on October 18 and by Hungary on December 12, are identical in their provisions with the Germany treaty, except for the substitutions of the treaties of St. Germain-en-Laye and the Trianon, respectively, in place of the treaty of Versailles, and of numbered sections of those treaties corresponding to the sections enumerated in Article II, below.

References. — *Text*, English and German, in *U. S. Stat. at Large*, XLII, Part II, 1939–1944. The Austrian and Hungarian treaties, English text, are in *ibid.*, 1946–1948, 1951–1953, where is also, pp. 2200–2204, the text of the agreement of August 10, 1922, for the settlement of claims under the German treaty. The joint resolution of July 2 is in *ibid.*, XLII, Part I, 105–107.

[The preamble of the treaty recites the joint resolution of July 2, 1921.]

Article I.

Germany undertakes to accord to the United States, and the United States shall have and enjoy, all the rights, privileges, indemnities, reparations or advantages specified in the aforesaid Joint Resolution . . . [of July 2, 1921] . . . including all the rights and advantages stipulated for the benefit of the United States in the Treaty of Versailles which the United States shall fully enjoy notwithstanding the fact that such Treaty has not been ratified by the United States.

Article II.

(1) [The rights and advantages stipulated in the Treaty of Versailles] for the benefit of the United States, which it is

intended the United States shall have and enjoy, are those defined in Section 1, of Part IV, and Parts V, VI, VIII, IX, X, XI, XII, XIV, and XV.

The United States in availing itself of the rights and advantages stipulated in the provisions of that Treaty mentioned in this paragraph will do so in a manner consistent with the rights accorded to Germany under such provisions.

(2) That the United States shall not be bound by the provisions of Part I of that Treaty, nor by any provisions of that Treaty including those mentioned in Paragraph (1) of this Article, which relate to the Covenant of the League of Nations, nor shall the United States be bound by any action taken by the League of Nations, or by the Council or by the Assembly thereof, unless the United States shall expressly give its assent to such action.

(3) That the United States assumes no obligations under or with respect to the provisions of Part II, Part III, Sections 2 to 8 inclusive of Part IV, and Part XIII of that Treaty.

(4) That, while the United States is privileged to participate in the Reparation Commission, according to the terms of Part VIII of that Treaty, and in any other Commission established under the Treaty or under any agreement supplemental thereto, the United States is not bound to participate in any such commission unless it shall elect to do so.

(5) That the periods of time to which reference is made in Article 440 of the Treaty of Versailles shall run, with respect to any act or election on the part of the United States, from the date of the coming into force of the present Treaty.

[Seal.] Ellis Loring Dresel
[Seal.] Rosen

No. 211. Four-Power Pacific Treaty

December 13, 1921

THE four-Power treaty relating to the Pacific, one of the fruits of the Washington Conference of 1921–22, was signed at Washington on December 13, 1921. Appended to the treaty is a declaration reciting the understanding

of the signatory Powers (1) "that the treaty shall apply to the Mandated Islands in the Pacific Ocean; provided, however, that the making of the treaty shall not be deemed to be an assent on the part of the United States of America to the mandates and shall not preclude agreements between the United States of America and the Mandatory Powers respectively in relation to the mandated islands"; and (2) "that the controversies to which the second paragraph of Article I refers shall not be taken to embrace questions which according to principles of international law lie exclusively within the domestic jurisdiction of the respective Powers." The deposit of ratifications at Washington on August 17, 1923, was accompanied by the further "reservation and understanding" on the part of the United States "that under the statement in the preamble or under the terms of this treaty there is no commitment to armed force, no alliance, no obligation to join in any defense." On August 21 the treaty was proclaimed. A supplementary treaty of February 6, 1922, further defined the term "insular possessions and insular dominions" in its application to Japan.

REFERENCES. — *Text*, English and French, in *U. S. Stat. at Large*, XLIII, Part II, 1646–1649. The text of the supplementary treaty is in *ibid.*, 1652–1654.

I.

The High Contracting Parties agree as between themselves to respect their rights in relation to their insular possessions and insular dominions in the region of the Pacific Ocean.

If there should develop between any of the High Contracting Parties a controversy arising out of any Pacific question and involving their said rights which is not satisfactorily settled by diplomacy and is likely to affect the harmonious accord now happily subsisting between them, they shall invite the other High Contracting Parties to a joint conference to which the whole subject will be referred for consideration and adjustment.

II.

If the said rights are threatened by the aggressive action of any other Power, the High Contracting Powers shall communicate with one another fully and frankly in order to arrive at an understanding as to the most efficient measures to be taken, jointly or separately, to meet the exigencies of the particular situation.

III.

This Treaty shall remain in force for ten years from the time it shall take effect, and after the expiration of said period it shall

continue to be in force subject to the right of any of the High Contracting Parties to terminate it upon twelve months' notice.[1]

No. 212. War Debt Commission

February 9, 1922

A BILL for the creation of a commission authorized to refund and convert debts owed by foreign Governments to the United States, introduced in the House on October 19, 1921, by Representative Fordney of Michigan, was reported without amendment the next day from the Committee of Ways and Means, and on the 24th passed the House by a vote of 200 to 117. An amended bill, reported in the Senate on January 16 from the Committee on Finance, was debated at length from the 21st to the 31st, when it was passed, the vote being 39 to 26. The Senate amendments were accepted by the House on February 3, and on the 9th the act was approved. An amendatory act of February 28, 1923, approved the debt settlement that had been made with Great Britain, authorized the conclusion of settlements with other Governments "upon such terms as the Commission . . . may believe to be just, subject to the approval of the Congress by Act or joint resolution," and increased to eight the membership of the Commission. An act of January 21, 1925, provided for terminating the authority of the Commission in "two years from February 9, 1925."

REFERENCES. — *Text* in *U. S. Stat. at Large*, XLII, Part I, 363. The debates are in the *Cong. Record*, 67th Cong., 1st Sess. *Senate Report* 400 gives statistical data.

An Act To create a commission authorized under certain conditions to refund or convert obligations of foreign Governments held by the United States of America, and for other purposes.

Be it enacted . . . ., That a World War Foreign Debt Commission is hereby created consisting of five members, one of whom shall be the Secretary of the Treasury, who shall serve as chairman, and four of whom shall be appointed by the President, by and with the advice and consent of the Senate.

[1] Signed on behalf of the United States by Charles Evans Hughes, Henry Cabot Lodge, Oscar W. Underwood and Elihu Root; of Great Britain by Arthur James Balfour and [Baron] Lee of Fareham; of Canada by R. L. Borden; of Australia by G. F. Pearce; of New Zealand by John W. Salmond; of South Africa by Arthur James Balfour; of India by V. S. Srinivasa Sastri; of France by René Viviani, A. Sarraut and [Jules J.] Jusserand; and of Japan by [Baron] T. Kato, [Baron] K. Shidehara, [Prince] Tokugawa Iyesato and M. Hanihara.

SEC. 2. That, subject to the approval of the President, the commission created by section 1 is hereby authorized to refund or convert, and to extend the time of payment of the principal or the interest, or both, of any obligation of any foreign Government now held by the United States of America, or any obligation of any foreign Government hereafter received by the United States of America (including obligations held by the United States Grain Corporation, the War Department, the Navy Department, or the American Relief Administration), arising out of the World War, into bonds or other obligations of such foreign Government in substitution for the bonds or other obligations of such Government now or hereafter held by the United States of America, in such form and of such terms, conditions, date or dates of maturity, and rate or rates of interest, and with such security, if any, as shall be deemed for the best interests of the United States of America: *Provided*, That nothing contained in this Act shall be construed to authorize or empower the commission to extend the time of maturity of any such bonds or other obligations due the United States of America by any foreign Government beyond June 15, 1947, or to fix the rate of interest at less than $4\frac{1}{2}$ per centum per annum: *Provided further*, That when the bond or other obligation of any such Government has been refunded or converted as herein provided, the authority of the commission over such refunded or converted bond or other obligation shall cease.

SEC. 3. That this Act shall not be construed to authorize the exchange of bonds or other obligations of any foreign Government for those of any other foreign Government, or cancellation of any part of such indebtedness except through payment thereof.

SEC. 4. That the authority granted by this Act shall cease and determine at the end of three years from the date of the passage of this Act.

SEC. 5. That the annual report of this commission shall be included in the Annual Report of the Secretary of the Treasury on the state of the finances, but said commission shall immediately transmit to the Congress copies of any refunding agreements entered into, with the approval of the President, by each

foreign Government upon the completion of the authority granted under this Act.

Approved, February 9, 1922.

No. 213. Immigration Act

May 26, 1924

THE policy of restricting immigration, already embodied in the act of February 20, 1907 [No. 195], underwent marked development during and after the World War. An act of February 5, 1917, regulating immigration and the residence of aliens in the United States, repealed most of the provisions of existing immigration laws except those relating to the Chinese, and an amendatory act of October 16, 1918, specifically excluded alien anarchists. The latter act was itself amended by an act of June 5, 1920. An act of May 19, 1921, applicable to all places under the jurisdiction of the United States except the Canal Zone and the Philippine Islands, limited the number of aliens of any nationality who might be admitted in any fiscal year to three per cent of "the number of foreign-born persons of such nationality resident in the United States as determined by the United States census of 1910," the remaining provisions of the act, however, being additions to and not substitutes for the existing laws.

A bill to restrict the immigration of aliens, introduced in the House on March 17, 1924, by Representative Johnson of Washington, and reported with amendments on the 24th, was made a special order for April 5, and debated at length from that date until April 12, when it passed, the vote being 323 to 71. The Senate amended the bill by substituting a bill introduced by Reed of Pennsylvania on February 20, and passed the bill in this form on April 18 by a vote of 62 to 6. A report of a conference committee was rejected by the House on May 9, but a second conference report was agreed to by both houses on May 15, the vote in the Senate being 69 to 9 and in the House 308 to 62, and on May 26 the act was approved.

REFERENCES. — *Text* in *U. S. Stat. at Large*, XLIII, Part I, 153–169. For the debates see the *Cong. Record*, 67th Cong., 1st Sess. The report of March 24, *House Report* 350, is important. The act of February 5, 1917, is in *U. S. Stat. at Large*, XXXIX, Part I, 874–898; the act of October 16, 1918, *ibid.*, XL, Part I, 1012, 1013; the act of June 5, 1920, *ibid.*, XLI, Part I, 1008, 1009; the act of May 19, 1921, known as the "three per cent" act, *ibid.*, XLII, Part I, 5–7. See also J. B. Trevor, *An Analysis of the American Immigration Act of 1924* (Carnegie Endowment for International Peace); H. P. Fairchild, *The Immigration Law of 1924*, in *Quart. Jour. of Econ.*, August, 1924; A. W. Parker, *The Ineligible to Citizenship Provision of the Immigration Act of 1924*, in *Amer. Jour. of Intern. Law*, XIX.

An Act To limit the immigration of aliens into the United States, and for other purposes.

SEC. 11. (a) The annual quota of any nationality shall be 2 per centum of the number of foreign-born individuals of such nationality resident in continental United States as determined by the United States census of 1890, but the minimum quota of any nationality shall be 100.

(b) The annual quota of any nationality for the fiscal year beginning July 1, 1927, and for each fiscal year thereafter, shall be a number which bears the same ratio to 150,000 as the number of inhabitants in continental United States in 1920 having that national origin (ascertained as hereinafter provided in this section) bears to the number of inhabitants in continental United States in 1920, but the minimum quota of any nationality shall be 100.

(c) For the purpose of subdivision (b) national origin shall be ascertained by determining as nearly as may be, in respect of each geographical area which under section 12 is to be treated as a separate country (except the geographical areas specified in subdivision (c) of section 4) the number of inhabitants in continental United States in 1920 whose origin by birth or ancestry is attributable to such geographical area. Such determination shall not be made by tracing the ancestors or descendants of particular individuals, but shall be based upon statistics of immigration and emigration, together with rates of increase of population as shown by successive decennial United States censuses, and such other data as may be found to be reliable.

(d) For the purpose of subdivisions (b) and (c) the term "inhabitants in continental United States in 1920" does not include (1) immigrants from the geographical areas specified in subdivision (c) of section 4 or their descendants, (2) aliens ineligible to citizenship or their descendants, (3) the descendants of slave immigrants, or (4) the descendants of American aborigines.

(e) The determination provided for in subdivision (c) of this section shall be made by the Secretary of State, the Secretary of Commerce, and the Secretary of Labor, jointly. In making such determination such officials may call for information and expert assistance from the Bureau of the Census. Such officials shall,

jointly, report to the President the quota of each nationality, determined as provided in subdivision (b), and the President shall proclaim and make known the quotas so reported. Such proclamation shall be made on or before April 1, 1927. If the proclamation is not made on or before such date, quotas proclaimed therein shall not be in effect for any fiscal year beginning before the expiration of 90 days after the date of the proclamation. After the making of a proclamation under this subdivision the quotas proclaimed therein shall continue with the same effect as if specifically stated herein, and shall be final and conclusive for every purpose except (1) in so far as it is made to appear to the satisfaction of such officials and proclaimed by the President, that an error of fact has occurred in such determination or in such proclamation, or (2) in the case provided for in subdivision (c) of section 12. If for any reason quotas proclaimed under this subdivision are not in effect for any fiscal year, quotas for such year shall be determined under subdivision (a) of this section. . . .

SEC. 12. (a) For the purposes of this Act nationality shall be determined by country of birth, treating as separate countries the colonies, dependencies, or self-governing dominions, for which separate enumeration was made in the United States census of 1890. . . . An immigrant born in the United States who has lost his United States citizenship shall be considered as having been born in the country of which he is a citizen or subject, or if he is not a citizen or subject of any country, then in the country from which he comes.

(b) The Secretary of State, the Secretary of Commerce, and the Secretary of Labor, jointly, shall, as soon as feasible after the enactment of this Act, prepare a statement showing the number of individuals of the various nationalities resident in continental United States as determined by the United States census of 1890, which statement shall be the population basis for the purposes of subdivision (a) of section 11. In the case of a country recognized by the United States, but for which a separate enumeration was not made in the census of 1890, the number of individuals born in such country and resident in continental United States in 1890, as estimated by such officials jointly, shall be considered for the purposes of subdivision

(a) of section 11 as having been determined by the United States census of 1890. In the case of a colony or dependency existing before 1890, but for which a separate enumeration was not made in the census of 1890 and which was not included in the enumeration for the country to which such colony or dependency belonged, or in the case of territory administered under a protectorate, the number of individuals born in such colony, dependency, or territory, and resident in continental United States in 1890, as estimated by such officials jointly, shall be considered for the purposes of subdivision (a) of section 11 as having been determined by the United States census of 1890 to have been born in the country to which such colony or dependency belonged or which administers such protectorate.

(c) In case of changes in political boundaries in foreign countries occurring subsequent to 1890 and resulting in the creation of new countries, the Governments of which are recognized by the United States, or in the establishment of self-governing dominions, or in the transfer of territory from one country to another, such transfer being recognized by the United States, or in the surrender by one country of territory, the transfer of which to another country has not been recognized by the United States, or in the administration of territories under mandates, (1) such officials, jointly, shall estimate the number of individuals resident in continental United States in 1890 who were born within the area included in such new countries or self-governing dominions or in such territory so transferred or surrendered or administered under a mandate, and revise (for the purposes of subdivision (a) of section 11) the population basis as to each country involved in such change of political boundary, and (2) if such changes in political boundaries occur after the determination provided for in subdivision (c) of section 11 has been proclaimed, such officials, jointly, shall revise such determination, but only so far as necessary to allot the quotas among the countries involved in such change of political boundary. For the purpose of such revision and for the purpose of determining the nationality of an immigrant, (A) aliens born in the area included in any such new country or self-governing dominion shall be considered as having been born in such country or dominion, and aliens born in any territory so transferred shall

be considered as having been born in the country to which such territory was transferred, and (B) territory so surrendered or administered under a mandate shall be treated as a separate country. Such treatment of territory administered under a mandate shall not constitute consent by the United States to the proposed mandate where the United States has not consented in a treaty to the administration of the territory by a mandatory power. . . .

(d) The statements, estimates, and revisions provided in this section shall be made annually. . . .

(e) Such officials shall, jointly, report annually to the President the quota of each nationality under subdivision (a) of section 11, together with the statements, estimates, and revisions provided for in this section. The President shall proclaim and make known the quotas so reported and thereafter such quotas shall continue, with the same effect as if specifically stated herein, for all fiscal years except those years for which quotas are in effect as proclaimed under subdivision (e) of section 11, and shall be final and conclusive for every purpose.

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SEC. 14. Any alien who at any time after entering the United States is found to have been at the time of entry not entitled under this Act to enter the United States, or to have remained therein for a longer time than permitted under this Act or regulations made thereunder, shall be taken into custody and deported in the same manner as provided for in sections 19 and 20 of the Immigration Act of 1917: *Provided*, That the Secretary of Labor may, under such conditions and restrictions as to support and care as he may deem necessary, permit permanently to remain in the United States, any alien child who, when under sixteen years of age was heretofore temporarily admitted to the United States and who is now within the United States and either of whose parents is a citizen of the United States.

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SEC. 23. Whenever any alien attempts to enter the United States the burden of proof shall be upon such alien to establish that he is not subject to exclusion under any provision of the immigration laws; and in any deportation proceeding against any alien the burden of proof shall be upon such alien to show

that he entered the United States lawfully, and the time, place, and manner of such entry into the United States, but in presenting such proof he shall be entitled to the production of his immigration visa, if any, or of other documents concerning such entry, in the custody of the Department of Labor.

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No. 214. Indian Citizenship

June 2, 1924

By the Dawes act of February 8, 1887, for the allotment of lands in severalty to Indians, every Indian born within the territorial limits of the United States to whom allotments should have been made under the act, or under any law or treaty, and every Indian so born who should have voluntarily taken up his residence separate and apart from any tribe, was declared to be a citizen of the United States. The lands so allotted were to be held by the United States in trust for twenty-five years, with authority in the President to extend the period in his discretion. The provisions of the act did not extend to the lands of the Cherokees, Creeks, and a number of other tribes in the then Indian Territory, nor to certain designated lands in New York and Nebraska. Under this and subsequent acts more than half of the Indians in the United States were reported in 1924 to have been admitted to citizenship. A bill introduced in the House on January 29, 1924, and passed by that body, with unimportant amendment, on March 18, authorized the Secretary of the Interior, in his discretion, to issue certificates of citizenship to Indians who applied for them. The Senate amended the bill by providing for the immediate grant of citizenship directly. On May 23 the House, without a division, agreed to the Senate amendment, and on June 2 the act was approved. About 125,000 Indians were stated to have been affected by the act.

References. — *Text* in *U. S. Stat. at Large*, XLIII, Part I, 253. The debates, which were brief, are in the *Cong. Record*, 68th Cong., 1st Sess. See also *House Report* 222 and *Senate Report* 441.

An Act To authorize the Secretary of the Interior to issue certificates of citizenship to Indians.

Be it enacted . . ., That all non-citizen Indians born within the territorial limits of the United States be, and they are hereby, declared to be citizens of the United States: *Provided*, That the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property.

Approved, June 2, 1924.

No. 215. Senate Resolution of Adherence to the World Court

January 27, 1926

FEBRUARY 24, 1923, in a special message to the Senate, President Harding asked the consent of the Senate to the adherence of the United States to the Permanent Court of International Justice, commonly known as the World Court. Accompanying the message was a letter from Secretary of State Hughes recommending certain qualifications to be incorporated in the proposed instrument of adherence. A further letter from Secretary Hughes, dated March 1, transmitted certain information regarding the proposed qualifications asked for by the Senate Committee on Foreign Relations. A resolution embodying the substance of the first four reservations later adopted was introduced by Senator King of Utah on March 3 and laid on the table. The recommendation of President Harding was repeated by President Coolidge in his first annual message, December 6, 1923, "with the proposed reservations clearly indicating our refusal to adhere to the League of Nations"; and in his second annual message, December 3, 1924, with the further qualification "that our country shall not be bound by advisory opinions which may be rendered by the court upon questions which we have not voluntarily submitted for its judgment." The views of President Coolidge were reiterated in his inaugural address, March 4, 1925, and in his annual message of December 8.

The recommendations of President Harding and President Coolidge precipitated a controversy in the Senate and in the country which continued for many months, in the course of which a number of resolutions relating to the subject were offered in both the Senate and the House of Representatives. March 3, 1925, the House, by a vote of 303 to 28, 100 not voting, approved a resolution expressing "cordial approval" of the court and "an earnest desire that the United States give early adherence to the protocol" of adherence. On March 13, at the special session of the Senate, 69th Congress, a resolution introduced on March 6 by Senator Swanson of Virginia was made the special order for December 17. Debate on the Swanson resolution began on that date, and on January 27, 1926, the amended resolution was passed, the vote being 76 to 17, 3 not voting.

April 19, in reply to a communication from the Secretary-General of the League of Nations, inviting the United States to appoint delegates to meet with representatives of the members of the League at Geneva "for the purpose of discussing any questions which it may be proper for them to discuss in this connection, and for the purpose of framing any new agreement which may be found necessary to give effect to the special conditions on which the United States is prepared to adhere to the protocol", Secretary of State Kellogg stated that the reservations "are plain and unequivocal", that "according to their terms, they must be accepted by the exchange of notes between the United States and each one of the forty-eight states signatory to the statute of the Permanent Court before the United States can become a

party and sign the protocol", and that he had "no authority to vary this mode of procedure or to modify the conditions and reservations or to interpret them." On September 23 the conference of delegates at Geneva, in which the United States was not represented, approved the American reservations with the proviso that acceptance might be withdrawn by the signatory states acting together and with not less than a two-thirds majority.

REFERENCES. — *Text* in *Cong. Record*, 69th Cong., 1st Sess., 2824, 2825. The Hughes letter of February 17, 1923, to which is appended the text of the protocol, is in *ibid.*, 67th Cong., 4th Sess., 4500–4504; it also forms *Senate Doc.* 309. The Hughes letter of March 1, 1923, *Senate Doc.* 342, is also in the *Record*, where will also be found the text of the Swanson resolution of March 6. The voluminous literature of the subject, including the Senate debates, is mainly controversial. A. P. Fachiri, *The Permanent Court of International Justice*, is valuable for the history and procedure of the court.

Whereas the President, under date of February 24, 1923, transmitted a message to the Senate, accompanied by a letter from the Secretary of State, dated February 17, 1923, asking the favorable advice and consent of the Senate to the adherence on the part of the United States to the protocol of December 16, 1920, of signature of the statute for the Permanent Court of International Justice, set out in the said message of the President (without accepting or agreeing to the optional clause for compulsory jurisdiction contained therein), upon the conditions and understandings hereafter stated, to be made a part of the instrument of adherence: Therefore be it

Resolved (*two-thirds of the Senators present concurring*), That the Senate advise and consent to the adherence on the part of the United States to the said protocol of December 16, 1920, and the adjoined statute for the Permanent Court of International Justice (without accepting or agreeing to the optional clause for compulsory jurisdiction contained in said statute), and that the signature of the United States be affixed to the said protocol, subject to the following reservations and understandings, which are hereby made a part and condition of this resolution, namely:

1. That such adherence shall not be taken to involve any legal relation on the part of the United States to the League of Nations or the assumption of any obligations by the United States under the treaty of Versailles.

2. That the United States shall be permitted to participate, through representatives designated for the purpose and upon an equality with the other States, members, respectively, of the

Council and Assembly of the League of Nations, in any and all proceedings of either the council or the assembly for the election of judges or deputy judges of the Permanent Court of International Justice or for the filling of vacancies.

3. That the United States will pay a fair share of the expenses of the court as determined and appropriated from time to time by the Congress of the United States.

4. That the United States may at any time withdraw its adherence to the said protocol and that the statute for the Permanent Court of International Justice adjoined to the protocol shall not be amended without the consent of the United States.

5. That the court shall not render any advisory opinion except publicly after due notice to all states adhering to the court and to all interested states and after public hearing or opportunity for hearing given to any state concerned; nor shall it, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest.

The signature of the United States to the said protocol shall not be affixed until the powers signatory to such protocol shall have indicated, through an exchange of notes, their acceptance of the foregoing reservations and understandings as a part and a condition of adherence by the United States to the said protocol.

Resolved further, As a part of this act of ratification that the United States approve the protocol and statute hereinabove mentioned, with the understanding that recourse to the Permanent Court of International Justice for the settlement of differences between the United States and any other state or states can be had only by agreement thereto through general or special treaties concluded between the parties in dispute; and

Resolved further, That adherence to the said protocol and statute hereby approved shall not be so construed as to require the United States to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions of policy or internal administration of any foreign state; nor shall adherence to the said protocol and statute be construed to imply a relinquishment by the United States of its traditional attitude toward purely American questions.

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